

The Calcutta Gazette

WEDNESDAY, FEBRUARY 28, 1923.

PART III.

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 585L., dated the 26th February, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the Local Legislature of Bengal, having been assented to by the Governor-General on the 23rd instant, is hereby published for general information :—

(*Sections 4, 5.*)

Issue of warrant on receipt of report.

4. (*1*) On receipt of the report of the Commissioner of Police or of the District Magistrate, as the case may be, the Local Government may make an order for the issue of a warrant for the arrest of the person against whom the report has been made.

(*2*) The warrant shall be in such a form as shall be prescribed by the Local Government by notification in the *Calcutta Gazette* and shall be issued by a Secretary to the Local Government and shall contain a statement of the heads of the charges made against such person in the report, and shall further require such person to submit by petition to the advising Judges appointed under sub-section (*1*) of section 5 by such date as may be specified in the warrant any representation that he may desire to make.

(*3*) The officer by whom such warrant is issued shall have—

(*i*) for the enforcement of the attendance of the person, against whom the warrant is issued, at such place and at such time or times as may be specified therein (and thereafter as such officer may direct) in order to communicate to such person the final order of the Local Government made under section 6, and

(*ii*) for the forfeiture, under section 514 of the Code of Criminal Procedure, 1898, of any bond, executed for the attendance of such person at such place and at such time or times, V of 1898.

all the powers of a Presidency Magistrate under the Code of Criminal Procedure, 1898; and the warrant shall for the purposes set forth in clauses (*i*) and (*ii*) be deemed to be a warrant issued by a Presidency Magistrate, for the arrest of such person to answer a charge in respect of a bailable offence committed by him within the jurisdiction of such Magistrate, and such person, in default of sufficient security being furnished, may, unless such officer otherwise directs, be detained in custody until the final order of the Local Government under section 6 is communicated to him.

Local Government to place report before advising Judges.

5. (*1*) After issue of the warrant under section 4, the Local Government shall forthwith cause the report of the Commissioner of Police or of the District Magistrate, as the case may be, with all material facts and circumstances in their possession relevant to the same to be placed before two advising Judges, of whom one shall be a District and Sessions Judge of Alipore and the other a District and Sessions Judge who has served as such for a period of not less than five years.

(*Sections 8—10.*)

Identification order.

8. Every person, in respect of whom an order has been made under section 6 shall, if so directed by the Commissioner of Police or the District Magistrate, as the case may be,—

(*i*) present himself to be photographed;

(*ii*) allow his finger impressions to be recorded;

(*iii*) if literate, furnish such officer with specimens of his handwriting and signature; and

(*iv*) attend at such times and places as the Commissioner of Police or the District Magistrate, as the case may be, may direct for all or any of the aforesaid purposes.

Penalty for breach of order under section 6.

9. When any person, against whom an order has been made under section 6, fails to comply with such order within the time specified therein, or after complying with the said order returns to, or after evading the said order returns to or remains in, any place within Bengal or the Presidency area, as the case may be, before the expiry of the period stated in the order, or fails to give to the officer appointed to receive it the information in regard to residence or absence set forth in section 6, such person may be arrested without a warrant by a police-officer and shall be liable, on conviction before a Presidency Magistrate, or a Magistrate of the first class, to be punished with rigorous imprisonment for a term which may extend to one year.

Penalty for breach of order under section 8 or for absconding to evade an order under section 6.

10. (*1*) Any person who fails to comply with, or attempts to evade, any direction given in accordance with the provisions of section 8, or who absconds in order to evade any order made under section 6, shall be liable to be arrested without a warrant and shall, on conviction before a Presidency Magistrate, or a Magistrate of the first class, be liable to be punished with imprisonment for a term which may extend to six months, or to a fine which may extend to one thousand rupees, or to both.

(*2*) An offence under this section and under section 9 shall be deemed to be a non-bailable offence.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

BENGAL ACT III OF 1923.

THE CALCUTTA MUNICIPAL ACT, 1923.

SUMMARY OF CONTENTS.

THE CALCUTTA MUNICIPAL ACT, 1923.

CONTENTS.

PREAMBLE.

PART I.

CHAPTER I.

PRELIMINARY.

PART II.

CONSTITUTION AND GOVERNMENT.

CHAPTER II.

THE CORPORATION.

Constitution.

Powers, duties and functions of the Corporation.

Control by the Local Government.

Municipal drains.

SECTION.

252. Power to Corporation to improve, discontinue, etc., municipal drains, etc.
253. Private streets, etc., not to be constructed over municipal drain without permission.
254. Communication of drain under control of local authority beyond Calcutta with municipal drain.
255. Communication of municipal drains with drains, lakes, etc., beyond Calcutta.

Drainage of premises.

256. Right of owner or occupier of premises to empty his house-drain into municipal drain.
257. Connections with municipal drains not to be made except in conformity with section 256.
258. Compulsory connection of house-drains with each other.
259. Power to Corporation to drain group or block of premises by a combined operation.
260. Power to Corporation to enforce drainage of undrained premises situate within one hundred feet of a municipal drain.
261. Power to Corporation to enforce drainage of undrained premises in other cases.
262. Power to Corporation to close or limit the use of house-drain in certain cases.
263. Power to Corporation to require that sewage and rain-water drains be distinct in any premises.
264. Power to Corporation to require paving, maintaining and raising level of courtyard, etc.
265. Drains for huts.
266. Rules as to drains.

Privies, urinals and bathing and washing places.

267. Power to Corporation to provide and maintain public privies and urinals.
268. Power to Corporation to license public privies and urinals.
269. Privy and urinal accommodation to be provided in new buildings.
270. Privy, urinal and other accommodation for premises for twenty or more labourers or workmen.
271. Provision for privy and urinal accommodation in premises where accommodation is not provided or is insufficient.

Opening, improvement and closing of public streets, squares and gardens.

SECTION.

306. Power to Corporation to make, improve and close streets, squares and gardens.

307. Power to Corporation to dispose of a permanently-closed street, square or garden

Projected public streets.

308. Projected public streets.

309. Provisions of sections 302 and 303 to apply to projected public streets.

Acquisition of land and buildings.

310. Power to Corporation to acquire land and buildings for improvement of public streets, squares and gardens.

Abandonment of Acquisition.

311. Abandonment of acquisition in consideration of special payment.

312. Recovery of money payable in pursuance of section 311.

313. Agreement or payment under section 311 not to bar acquisition under a fresh declaration.

Special provisions as to private streets.

314. Making of new private streets.

315. Prohibition of breach of section 314.

316. Alteration or demolition of street made in breach of section 314.

317. Levelling, etc., of private streets.

318. Power to Corporation to take over private streets.

CHAPTER XXI.

BUILDINGS.

319. Use of building-sites, and erection of new buildings.

320. Corporation to determine site of proposed masonry building.

Licensed building surveyors.

321. Licensing of building surveyors.

322. Rules for guidance of licensed building surveyors.

323. Power to Corporation to decline plans, etc., made by persons other than licensed building surveyors..

CHAPTER XXIII.

DEMOLITION, ALTERATION AND STOPPING OF UNLAWFUL WORK.

SECTION.

CHAPTER XXIV.

LIGHTING AND SCAVENGING, AND REGULATION OF PUBLIC BATHING AND WASHING.

Lighting.

Keeping of animals.

Scavenging.

Public bathing and washing.

CHAPTER XXV.

MUNICIPAL RAILWAYS.

Inspection, seizure and destruction of food and drugs.

SECTION.

Analysis of food and drugs.

Vesting of condemned food or drug in Corporation.

CHAPTER XXIX.

MILK-SUPPLY.

Additional powers for acquisition, disposal, etc.

RULE.

11. Time for presentation of applications for remissions, etc.
12. Power to Executive Officer to issue notices to take out licenses, etc.
13. Executive Officer to prove liability when service of notice not proved.
14. Appeal to Bench or to Court of Small Causes.
15. Statement by appellant.
16. Procedure of Court in appeal.
17. Finality of order of Corporation or Executive Officers when no appeal.

SCHEDULE VII.

WARDS FOR PURPOSES OF VALUATION.

SCHEDULE VIII.

TAX ON CARRIAGES AND ANIMALS.

SCHEDULE IX.

SCAVENGING-TAX.

SCHEDULE X.

FORM OF NOTICE OF DEMAND.

SCHEDULE XI.

FORM OF WARRANT OF DISTRESS.

SCHEDULE XII.

TABLE OF FEES PAYABLE ON WARRANTS OF DISTRESS.

SCHEDULE XIII.

FORM OF NOTICE OF SALE.

SCHEDULE XIV.

RULES AS TO PRIVATE CONNECTIONS TO PREMISES AND METERS.

Private connections to premises.

1. Separate service-pipes for separate premises.
2. Separate stop-cocks and underground hydrants or taps for supply of unfiltered water to private premises.

RULE.

Execution of works in public streets.

4. Guarding and lighting when public street opened or broken up and speedy completion of work.
5. Power to Corporation to prevent or restrict traffic in street during progress of work.

Naming of public streets and numbering of premises.

6. Posting of street names.
7. Numbering of premises.
8. Corporation to keep a register of premises.

SCHEDULE XVII.

RULES AS TO THE USE OF BUILDING-SITES AND THE EXECUTION OF BUILDING-WORK.

Part I.—Building-sites.

1. Conditions as to use of building-sites.
2. Certificate as to correctness of plans of a previously existing building and fees therefor.

Part II.—Buildings generally.

3. Height.
4. Level of floor.
5. Provision of fire-escapes, stair-cases and lift in certain buildings.
6. Certain buildings not to be erected within six feet of a service-privy.
7. Prohibition of use of inflammable materials for roofs or external walls.

Part III.—Masonry buildings generally.

8. Foundation.
9. Plinth.
10. Footings for walls.
11. Outer walls.
12. Bonding of walls.
13. Damp-proof course.
14. Walls in building of more than one story.
15. Floors.
16. Beams and girders.
17. Terrace-roofs.

RULE.

64. Lapse of permission, if not acted upon within three years, or, if granted before a certain date, except in certain circumstances.

65. Power to Corporation to cancel permission on the ground of material misrepresentation by applicant.

Part VIII.—Huts.

66. Continuous lines.

67. Distance between eaves and alignment.

68. Use of spaces referred to in rule 67.

69. Erection of huts in a *bustee* in court-yard formation.

70. Area of court-yard in huts not in a *bustee.*

71. Space between huts.

72. Distance of huts from metalled and sewered street.

73. Distance between hut and masonry building.

74. Distance between hut and cow-house, etc.

75. Prohibition of projections or dropping of water over street or passage.

76. Height.

77. Plinth.

78. Rooms.

79. Court-yards.

Part IX.—Applications for permission to erect new buildings which are huts.

80. Application to be sent, and particulars furnished, to Corporation by person intending to erect a hut.

81. Application for permission to erect a hut.

82. Power to Corporation to require further information or a proper site-plan.

83. Power to Corporation to employ licensed building surveyor to prepare site-plan, etc., for hut.

84. Permission to execute work when to be given or refused.

85. Remedy if Corporation delay grant or refusal of permission.

86. Grounds on which permission to erect a hut may be refused.

87. Retention of plan, and submission of fresh application, after refusal of permission to

BENGAL ACT III OF 1923.

THE CALCUTTA MUNICIPAL ACT, 1923.

An Act to amend and consolidate the law relating to the Municipal Affairs of the Town and Suburbs of Calcutta.

Preamble.

Whereas it is expedient to amend and consolidate, in the manner hereinafter appearing, the law relating to the municipal affairs of the town and suburbs of Calcutta;

And whereas the previous sanction of the Governor General required by section 80A, sub-section (3), of the Government of India Act, has been obtained to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101

It is hereby enacted as follows:—

PART I.

CHAPTER 1.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Calcutta Municipal Act, 1923.

(*2*) Except as is hereinafter otherwise expressly provided, it applies only to Calcutta.

(*3*) It shall come into force on the first day of April, 1924:

Provided that, before the said first day of April, 1924, and at such time (after this Act is published in the *Calcutta Gazette* after having received the assent of the Governor General) as the Local Government shall appoint, a general election and appointment of Councillors shall be held and made in the manner provided in this Act, and such election and appointment shall be deemed to have been held and made under the provisions of this Act, but such election or appointment shall not take effect until the said first day of April. For the purposes of such election, the Chairman of the Corporation shall exercise and perform the same powers and duties in Calcutta, as are conferred or imposed by or under this Act on the Executive Officer.

Explanation.—In this proviso, as elsewhere in this Act, the word "Calcutta" includes the area added to Calcutta as defined in clause (*1*) of section 3.

Repeal of enactments and savings.

2. (*1*) The following enactments are hereby repealed, namely:—

(*a*) the Calcutta Municipal Act, 1899, Ben. Act III of 1899.

(*b*) the Calcutta Municipal (Loans) Act, 1914, and Ben. Act IV of 1914.

(*c*) the Calcutta Municipal (Amendment) Act, 1917. Ben. Act I of 1917.

(*2*) In the area added to Calcutta—

(*a*) the Bengal Municipal Act, 1884, and Ben. Act III of 1884.

(*b*) the Bengal Food Adulteration Act, 1919, Ben. Act VI of 1919.

shall be deemed to be repealed.

(*Part I.—Chapter I.—Preliminary.—Section 3.*)

(*vi*) if it contains or is mixed or diluted with any substance in any quantity to the prejudice of the purchaser or consumer or in any proportion which diminishes in any manner its food value or nutritive properties as compared with the same in a pure or normal state and in an undeteriorated and sound condition, or

(*vii*) if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health, or

(*viii*) if it is not of the nature, substance or quality which it purports or is represented to be:

"Agent." (*3*) "agent" in section 46 and in Schedule II includes an election agent;

"Assessment-book." (*4*) "assessment-book" means the municipal assessment book prescribed by section 143, and includes any books subsidiary thereto;

"*Bazar.*" (*5*) "*bazar*" means any place of trade (other than a market) where there is a collection of shops or warehouses which the Corporation may, by resolution, declare to be a *bazar*;

"Budget-grant." (*6*) "budget-grant" means a sum entered on the expenditure side of a Budget Estimate which has been finally adopted, and includes also any sum by which a budget-grant is at any time increased by a transfer under clause (*c*) of sub-section (*1*) of section 95;

"Building." (*7*) "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall (other than a boundary wall not exceeding ten feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever, but does not include a *hogla* or other similar kind of temporary shed erected on ceremonial festive occasions;

"Building-line." (*8*) "building-line" means the line up to which the main wall of a building abutting on a street or a projected public street may lawfully extend.

"Building of the warehouse class." (*9*) "building of the warehouse class" means a building the whole, or a substantial part of which, is used, or intended to be used, as a warehouse, factory, manufactory, brewery, or distillery, or for any similar purpose, which is neither a "domestic building," nor a "public building" as defined in this section, and includes a hut used or intended to be used for any of the purposes mentioned in this clause;

(Part I.—Chapter I.—Preliminary.—Section 3.)

"Drain." (*25*) "drain" includes a sewer, a house-drain, a drain of any other description, a tunnel, a culvert, a ditch, a channel and any other device for carrying off sullage, sewage, offensive matter, polluted water, rain-water or sub-soil water;

"Drug." (*26*) "drug" means any substance used as medicine or in the composition or preparation of medicines, whether for internal or external use;

"Dwelling-house." (*27*) "dwelling-house" means a masonry building constructed, used or adapted to be used wholly or principally for human habitation;

"Edible oil or fat." (*28*) "edible oil or fat" means the oil or fat commonly used as wholesome foodstuff, which is free from rancidity and decomposition, and does not contain any mineral oil, *pakra* oil or any other substance injurious to health;

"Election agent." (*29*) "election agent" means the person appointed under section 27, sub-section (*2*), by a candidate as his agent for an election;

"Executive Officer." (*30*) "Executive Officer" means the Chief Executive Officer appointed under section 51, sub-section (*1*), and includes an acting Executive Officer appointed during his temporary absence;

"Food." (*31*) "food" includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and also includes confectionery, flavouring and colouring matters and spices and condiments;

"Habitable room." (*32*) "habitable room" means a room constructed or adapted for human habitation;

"Half-year." (*33*) "half-year" means half of a financial year;

"House-drain." (*34*) "house-drain" means any drain of, and used for the drainage of, one or more premises;

"House-gully." (*35*) "house-gully" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or of affording access to a privy, urinal, cesspool or other receptacle for filthy or polluted matter to municipal servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom, and includes the air space above such passage or land;

"Hut." (*36*) "hut" means any building, no substantial part of which, excluding the walls up to a height of eighteen inches above the floor or floor level, is constructed of masonry, steel, iron or other metal;

"Inhabited room." (*37*) "inhabited room" means a room in which some person passes the night, or which is used as a living room, and includes a room with respect to which there is a reasonable presumption (until the contrary is shown) that some person passes the night therein or that it is used as a living room;

(*Part I.—Chapter I.—Preliminary.—Section 3.*)

"Public building." (*56*) "public building" means a masonry building constructed, used or adapted to be used—

(*a*) as a place of public worship, or as a school, college or other place of instruction (not being a dwelling-house so used), or as a hospital, work-house, public theatre, public hall, public concert-room, public ball-room, public lecture-room, public library or public exhibition room, or as a public place of assembly, or

(*b*) for any other public purpose, or

(*c*) as an hotel, lodging-house, home, refuge, or shelter, where the building exceeds in cubical extent two hundred and fifty thousand cubic feet or has sleeping accommodation for more than one hundred persons;

"Public street." (*57*) "public street" means any street, road, lane, gully, alley, passage, pathway, square or court, whether a thoroughfare or not, over which the public have a right of way,

and includes—

(*a*) the roadway over any public bridge or causeway,

(*b*) the footway attached to any such street, public bridge or causeway, and

(*c*) the drains attached to any such street, public bridge or causeway,

and, where there is no drain attached to any such street, shall, unless the contrary is shown, be deemed to include also, all land up to the outer wall of the premises abutting on the street, or, if a street alignment has been fixed, then up to such alignment;

"Railway." (*58*) "railway" includes a tramway;

"Registered medical practitioner." (*59*) "registered medical practitioner" means a medical practioner registered under the Bengal Medical Act, 1914; Ben Act VI of 1914

"Reside." (*60*) (*a*) a person shall be deemed to "reside" in any dwelling-house or hut which, or some portion of which, he sometimes, although not uninterruptedly, uses as a sleeping apartment, and

(*b*) a person shall not be deemed to cease to "reside" in any such dwelling-house or hut merely because he is absent from it or has elsewhere another dwelling-house or hut in which he resides, if there is the liberty of returning to it at any time and no abandonment of the intention of returning to it;

"Rubbish." (*61*) "rubbish" means dust, ashes, broken bricks, mortar, broken glass, and refuse of any kind which is not "offensive matter" as defined in this section;

"Service-privy." (*62*) "service-privy" means a fixed privy which is cleansed by hand, but does not include a movable commode;

(Part II.—Chapter II.—The Corporation.—
Sections 9—12.)

Election of Aldermen.

9. (*1*) The five Aldermen referred to in clause (*c*) of section 5 shall be elected at a meeting of the elected and appointed Councillors to be held after the publication of the results of a general election and of the appointments made at that time within such period as the Local Government may fix and in such manner as they may prescribe, and such election shall take effect from the date on which the general election takes effect:

Provided that no Councillor shall be entitled to be elected as an Alderman.

(*2*) If there is any dispute as to the election of an Alderman, the matter shall be referred to for the decision of the Local Government, whose decision shall be final. If the Local Government set aside any such election, a fresh election shall be held.

Annual election of Mayor and Deputy Mayor.

10. (*1*) The Corporation shall, at their first meeting in each year, elect two of their number to be Mayor and Deputy Mayor, respectively, until the first meeting in the next following year.

(*2*) If any vacancy occurs in the office of Mayor or Deputy Mayor, the Corporation shall elect one of their number to fill such vacancy, and the Mayor or Deputy Mayor so appointed shall continue in office so long only as the person in whose place he is appointed would have been entitled to continue in office.

Powers, duties and functions of the Corporation.

Annual administration report and statement of accounts by the Corporation.

11. (*1*) The Corporation shall, as soon as may be after each first day of April, cause to be prepared a detailed report of the municipal administration of Calcutta during the previous year, together with a statement showing the amounts of the receipts and disbursements, respectively, credited and debited to the Municipal Fund during the said year, and the balance at the credit of the said fund at the close of the said year; and a report for the same period from the head of each department of the Corporation shall be incorporated in the said report.

(*2*) The Corporation shall thereupon forward a copy of the said report and statement to each Councillor and Alderman and to the Local Government.

(*3*) The Corporation shall, as soon as may be thereafter, consider the said report and statement, and a copy of the proceedings of any meeting at which the same may be discussed shall be forwarded by the Corporation to the Local Government.

(*4*) Copies of all the aforesaid documents shall be obtainable by any person requiring the same, on payment of such reasonable fee for each copy as the Corporation may determine.

Delegation of Corporation's functions.

12. (*1*) The Corporation may, by a resolution passed at a special meeting, delegate to the Executive Officer any of the Corporation's powers, duties or functions under this Act or under any rule or by-law made thereunder.

(*Part II.—Chapter II.—The Corporation.—Sections 18, 19.*)

the Local Government may, by written order, direct the Corporation within a period to be specified in the order,—

(*i*) to make arrangements to their satisfaction for the proper performance of the duties referred to in clause (*a*), or to make financial provision to their satisfaction for the performance of any such duty, as the case may be, or

(*ii*) to show cause to the satisfaction of the Local Government against the making of such arrangements or provision, as the case may be.

Procedure by Local Government where Corporation fail to take action.

18. (*1*) If, within the period fixed by any order issued under section 17, any action directed under clause (*i*) of that section has not been duly taken, or cause has not been shown as aforesaid, the Local Government may, by order,—

(*a*) appoint some person to take the action so directed,

(*b*) fix the remuneration to be paid to him, and

(*c*) direct that such remuneration and the cost of taking such action shall be defrayed out of the Municipal Fund and, if necessary, that the consolidated rate or other taxes authorized by Part IV shall be levied or increased, but not so as to exceed any *maximum* prescribed by that part.

(*2*) The person appointed under sub-section (*1*) may, for the purpose of taking the action directed as aforesaid, exercise any of the powers conferred by or under this Act which are specified in that behalf in the order issued under sub-section (*1*).

(*3*) The Local Government may, in addition to or instead of directing under sub-section (*1*) the levy or increase of the consolidated rate or other taxes, direct, by notification in the *Calcutta Gazette*, that any sum of money which may, in their opinion, be required for giving effect to any order issued under that sub-section be borrowed by way of debenture on the security of the said rate or all or any of the said taxes, or of both the said rate and all or any of the said taxes, at such rate of interest and upon such terms as to the time of repayment and otherwise as may be specified in the notification.

(*4*) The provisions of Chapter VIII shall apply to any loan raised in pursuance of sub-section (*3*).

Power of Local Government to annul illegal proceedings of Corporation.

19. The Local Government may, after consideration of any representation which may be made by the Corporation, by written order, annul any proceeding of the Corporation which they consider not to be in conformity with law or with the rules or by-laws in force thereunder, and may do all things necessary to secure such conformity.

(Part II.—Chapter III.—Election and appointment of Councillors and Aldermen—Section 21.)

constituency, and shall have the rights and be subject to the disabilities of an elector under this Act;

(*ii*) in any area added to Calcutta which was included within the South Suburban Municipality before the commencement of this Act, and which under this Act is included in any of the constituencies mentioned in column 1 of Schedule IV—

(*a*) any person whose name was entered in the general register of voters prepared under the provisions of section 15 of the Bengal Municipal Act, 1884, and the rules made thereunder, for the last election held in the South Suburban Municipality, so far as the names in the said general register relate to the area added to Calcutta, and — Ben. Act III of 1884.

(*b*) any female person who may apply to the Executive Officer claiming to be registered as an elector and stating her qualifications therefor, and who satisfies the Executive Officer that she possesses the qualifications prescribed in the case of males in the rules made under section 15 of the Bengal Municipal Act, 1884,

if his or her qualifications arose by virtue of rates paid on account of a holding lying within (or his or her occupation of a holding within) the said area, shall be entitled to vote at the first general election referred to in this sub-section or any by-election in the said constituency held prior to the second general election in that constituency, and shall have the rights and be subject to the disabilities of an elector under this Act; and

(*iii*) in any area added to Calcutta which was included in the Garden Reach Municipality before the commencement of this Act and which under this Act is included in any of the constituencies mentioned in column 1 of Schedule IV—

any male or female person who may apply to the Executive Officer claiming to be registered as an elector and stating his or her qualifications therefor, and who satisfies the Executive Officer that he or she possesses the qualifications prescribed in the case of males in the rules made under section 15 of the Bengal Municipal Act, 1884, shall be entitled to vote at the first general election referred to in this sub-section or any by-election in the said constituency held prior to the second general election in that constituency and shall have the

(*Part II.—Chapter III.—Election and appointment of Councillors and Aldermen—Section 24.*)

subject to any of the following disqualifications, namely :—

(*a*) has been adjudged by a competent court to be of unsound mind ; or

(*b*) is under twenty-one years of age :

Provided that the manager of a lunatic or the guardian of a minor appointed by the Court as such shall be entitled to have his name registered on the electoral roll as the representative of the lunatic or minor, if, but for the provisions of clauses (*a*) or (*b*) of sub-section (*1*) of section 22, as the case may be, such lunatic or minor would have been qualified for election.

(*2*) A company, body corporate, firm, joint family or other association of individuals, as such, shall not be registered in its own name in the electoral roll, but if qualified as an elector, may obtain the registration of the name of one of its members, as its representative on such roll.

(*3*) A person shall be entitled to have his name registered only once on the electoral roll of any constituency notwithstanding that he may possess more than one qualification :

Provided that a person who is registered as the representative of any company, body corporate, firm, joint family or other association of individuals under sub-section (*2*) or as the manager of a lunatic or the guardian of a minor shall not therefore be ineligible for registration in his individual capacity on the same electoral roll.

(*4*) Chamber members of the Bengal Chamber of Commerce, members of the Calcutta Trades Association, and Commissioners for the Port of Calcutta shall be qualified respectively as electors for the constituency comprising the Chamber, or Association or Trust of which they are such members.

Explanation.—(*a*) "Chamber member" includes any person entitled to exercise the rights and privileges of Chamber membership on behalf of any firm, company, or other corporate body registered as such member.

(*b*) "Member" includes—

(*i*) in the case of a firm, any one partner in the firm or, if no such partner is present in Calcutta at the date fixed for the election, any one person empowered to sign for such firm, and

(*ii*) in the case of a company or other corporate body, any one manager, director, or secretary of the company or corporate body.

(*5*) If any person is convicted of an offence under Chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, in the course of any proceedings under section 46, found by the High Court to have committed a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II of Schedule II, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or, if not on the electoral roll, shall not be so registered for a like period; and if any person is, in the course of such proceedings as aforesaid, found by the High Court to have committed any other corrupt practice, his name, if on the electoral roll, shall be removed therefrom and shall not be

Act XLV of 1860.

(*Part II.—Chapter III.—Election and appointment of Councillors and Aldermen.—Section 30.*)

(*3*) No votes shall be given either by the Government or by the Corporation.

(*4*) In plural-Councillor constituencies every elector shall have as many votes as there are Councillors to be elected, but no elector shall give more than one vote to any one candidate.

(*5*) Votes shall be counted by or under the supervision of the returning officer, and any candidate, or, in the absence of the candidate, a representative duly authorized by him in writing, shall have a right to be present at the time of counting.

(*6*) When the counting of the votes has been completed, the returning officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given to be elected.

(*7*) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the returning officer and the candidates and in such manner as he may determine.

(*8*) The returning officer shall without delay report the result of the election to the Executive Officer, and the name or names of the candidate or candidates elected shall be published in the *Calcutta Gazette*.

Local Government to make rules regarding the conduct of election.

30. (*1*) Subject to the provisions of this Act the Local Government shall make rules providing—

(*a*) for the form and manner in, and the conditions on, which nominations may be made, and for the scrutiny of nominations ;

(*b*) for the appointment of a returning officer for each constituency and for his powers and duties ;

(*c*) for the appointment of polling stations for each constituency ;

(*d*) for the appointment of officers to preside at polling stations, and for the duties of such officers ;

(*e*) for the checking of voters by reference to the electoral roll ;

(*f*) for the manner in which votes are to be given, and in particular for the case of illiterate voters, or voters under physical or other disability ;

(*g*) for the procedure to be followed in respect of tender of votes by persons representing themselves to be electors after other persons have voted as such electors ;

(*h*) for the scrutiny of votes ;

(*i*) for the safe custody of ballot papers and other election papers, for the period for which such papers shall be preserved, and for the inspection and production of such papers ;

and may make such other rules regarding the conduct of elections as they think fit.

(*Part II.—Chapter III.—Election and appointment of Councillors and Aldermen.—Sections 40—43.*)

the first meeting of the Corporation fixed under section 59 after a general election at which meeting a quorum is present

Provided that the said period may be extended by the Local Government for a period not exceeding one year, by notification in the *Calcutta Gazette*, if in special circumstances (to be specified in the notification) they so think fit.

Resignation of Councillors or Aldermen.

40. A Councillor or an Alderman may resign his office by notifying in writing his intention to do so, to the Mayor and on the acceptance of the resignation by the Corporation his seat shall become vacant.

Effect of subsequent disabilities.

41. If any person having been elected or appointed a Councillor, or elected an Alderman—

(*a*) subsequently becomes subject to any of the disabilities stated in clauses (*a*), (*c*), (*d*), (*e*), (*f*) or (*g*) of sub-section (*1*) or in sub-sections (*2*), (*3*) or (*4*) of section 22, or

(*b*) is declared by the Local Government, by notification in the *Calcutta Gazette*, (issued after due inquiry in which the Councillor or Alderman concerned shall have a right to be heard) to have violated his oath of allegiance, or

(*c*) absents himself during six consecutive months from the meetings of the Corporation, except from temporary illness or other cause which the Corporation may consider sufficient to justify such absence, or

(*d*) is retained or employed in any professional capacity in connection with any case or matter to which the Corporation is a party,

such person shall cease to be a Councillor or an Alderman, and the Local Government shall, by notification in the *Calcutta Gazette*, declare his seat to be vacant.

Explanation.—The expression "retained or employed in a professional capacity" shall be deemed to include appearance in any professional capacity before the Corporation or any of its Committees or before any officer of the Corporation in any matter to which the Corporation is a party.

Removal of Councillor or Alderman.

42. The Local Government may, if they think fit, on the recommendation of the Corporation, made after due inquiry in which the Councillor or Alderman concerned shall have the right to be heard, remove any Councillor or Alderman elected or appointed under this Act, if such Councillor or Alderman has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct.

Casual vacancies.

43. (*1*) When a vacancy occurs in the case of an elected Councillor or of an Alderman by reason of his seat becoming vacant under the provisions of section 38, or by reason of a declaration made under section 41, or of his election being declared void, or by his death, resignation duly accepted, or removal, the Executive Officer shall call upon the constituency concerned or the Councillors, as the

(*Part II.—Chapter III.—Election and appointment of Councillors and Alderman.—Sections 48, 49.*)

Operation of transitory provisions.

48. The provisions of this Act relating to elections of Councillors by general electorates are subject to the provisions of sections 49 and 50.

Transitory provisions to have effect at elections prior to the fourth general election.

49. (*1*) Notwithstanding anything contained elsewhere in this Act, the provisions of this section shall apply in respect of the election of Councillors at the first three general elections, held under this Act or in the manner provided therein, and at any by-election held prior to the fourth general election.

(*2*) Subject to the provisions of any other law for the time being in force every Muhammadan shall be qualified as an elector of a Muhammadan constituency specified in Schedule IV, who owns or occupies or resides in any premises, or exercises any profession, trade or calling, within that constituency, if such person possesses the qualification set forth in clause (*a*), clause (*b*) or clause (*c*) of sub-section (*1*) of section 20.

(*3*) No person shall be eligible for election as a Councillor to represent a Muhammadan constituency unless his name is duly registered in the electoral roll of that or any other Muhammadan constituency.

(*4*) In the case of the elections referred to in sub-section (*1*)—

(*a*) for section 8 the following shall be deemed to be substituted, namely :—

Constituencies.

"8. The elected Councillors shall be elected by the constituencies specified in Schedule IV, and the number of Councillors to be elected by each constituency shall be as stated therein against that constituency."

(*b*) for that portion of sub-section (*1*) of section 20 beginning with the figure and words "(*1*) Subject to" and ending with the words "specified in Schedule III", the following shall be deemed to be substituted, namely :—

"(*1*) Subject to the provisions of any other law on the subject for the time being in force, every person, other than a Muhammadan, shall be qualified as an elector of a non-Muhammadan constituency specified in Schedule IV",

(*c*) for section 23 the following shall be deemed to be substituted, namely :—

Qualification for election as a Councillor.

"23. (*1*) No person shall be eligible for election as a Councillor to represent a non-Muhammadan constituency specified in Schedule IV, unless his name is duly registered on the electoral roll of that or any other non-Muhammadan constituency specified in that schedule.

(Part II.—Chapter IV.—Municipal officers and servants.—Sections 54—56.)

(3) If any municipal officer or servant acquires, directly or indirectly as aforesaid, any share or interest as aforesaid, otherwise than as such officer or servant, he shall cease to be a municipal officer or servant and his office shall become vacant.

(4) Nothing in the foregoing sub-sections shall apply to any such share or interest as, under clause (*ii*) or clause (*iv*) of proviso (*a*) to section 22, it is permissible for a Councillor or an Alderman to have without being thereby disqualified for being a Councillor or an Alderman.

Indebtedness to disqualify for office under section 51

54. (*1*) No person shall be eligible for any office mentioned or referred to in section 51 if he is seriously indebted to any person.

(*2*) If any person holding any of the said offices becomes so indebted, the Corporation may, subject to the proviso to sub-section (*1*) of section 51, declare his office to be vacant.

Contribution in respect of pension or leave-allowances of Government servants appointed to be municipal officers or servants.

55. When a servant of the Government is appointed to be a municipal officer or servant, the Corporation shall pay, out of his salary, any contribution which may for the time being be levied by the Government in respect of his pension or leave-allowances.

Power to Corporation to make rules as to furnishing security and grant of leave of absence and allowances.

56. The Corporation, by a resolution in favour of which not less than two-thirds of the Councillors and Aldermen voting have voted, may make rules—

(*a*) fixing the amount and nature of the security to be furnished by any municipal officer or servant from whom it may be deemed expedient to require security;

(*b*) regulating the grant of leave of absence, allowances, pensions, bonuses and gratuities to municipal officers and servants;

(*c*) regulating the grant of compassionate allowances and gratuities to members of the families of deceased municipal officers and servants;

(*d*) for establishing and maintaining a provident or annuity fund, and for compelling all or any of the municipal officers or servants to contribute to such fund, and for making supplementary contributions out of the municipal fund; and

(*e*) for establishing and aiding in the establishment and maintenance of co-operative societies for the menials of the Corporation:

(*Part II.—Chapter V.—Conduct of business.—Sections 63—67.*)

(*2*) In the absence of the Mayor and Deputy Mayor, the Councillors and Aldermen present at any meeting shall choose one of their number to preside, who shall in case of equality of votes have a second or casting vote.

(*3*) The President of any meeting at which a quorum of the Councillors and Aldermen is present may, with the consent of a majority of the members present, adjourn the meeting from time to time and from place to place.

Quorum.

63. No business shall be transacted at any meeting unless a quorum of twenty members be present throughout the meeting:

Provided that, if at any meeting there is not a sufficient number of members present to form a quorum, the President of such meeting shall adjourn the meeting to such convenient time and place as he thinks fit; and the business which should have been brought before the original meeting, if there had been a quorum present, shall be brought forward and disposed of in the usual manner at the adjourned meeting, at which a quorum of fifteen members shall suffice.

Declaration by President that a resolution has been carried or lost.

64. At any meeting, unless a poll be demanded by at least five members, a declaration by the President of such meeting that a resolution has been carried or lost, and an entry to that effect in the minutes of proceedings shall, for the purposes of this Act, be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

Poll and ballot.

65. If a poll be demanded under section 64, the votes of all the members present who desire to vote shall be taken under the direction of the President of the meeting, and the result of such poll shall be deemed to be the resolution of the Corporation at such meeting:

Provided that the Corporation may, subject to such rules as may be made by them under section 66, resolve that any question or class of questions shall be decided by ballot.

Power to Corporation to make rules.

66. The Corporation may make rules for the conduct of business at their meetings.

Contracts and Seal of Corporation.

Execution of contracts by the Mayor or Deputy Mayor on behalf of the Corporation.

67. (*1*) The Corporation may enter into and perform all such contracts as they may consider necessary or expedient for carrying into effect the provisions of this Act.

(*2*) With respect to the making of such contracts the following provisions shall have effect, namely:—

(*a*) every such contract shall be made on behalf of the Corporation by the Mayor or Deputy Mayor;

(*b*) no contract shall be made by the Mayor or Deputy Mayor unless the same is previously sanctioned by the Corporation;

(Part II.—Chapter V.—Conduct of business.—Sections 72—74.)

(8) All the proceedings of every Standing Committee shall be subject to confirmation or revision by the Corporation :

Provided that, if, in delegating any of their functions, powers or duties to a Standing Committee under sub-section (1), the Corporation direct that the decision of the Standing Committee shall be final, then so much of the proceedings of the Standing Committee as relate to such functions, powers or duties shall not be subject to confirmation by the Corporation.

(9) The Corporation may make rules for regulating the conduct of business at meetings of Standing Committees and of Sub-committees appointed by them.

District Standing Committees.

72. (1) The Corporation may from time to time divide Calcutta into such districts consisting of different wards as they may think fit and appoint a Standing Committee, to be called the District Committee, for each such district and delegate to such Committees such functions, powers or duties of the Corporation as the Corporation may think fit relating to matters affecting their respective districts, and may also from time to time, by specific resolution, refer to them for inquiry and report or for opinion such matters relating to such districts as the Corporation may think fit.

(2) Each such District Committee shall consist of all the Councillors for the several constituencies comprised in each district and any Alderman or other Councillor living within the district and expressing his willingness to serve on such Committee.

(3) The District Committee shall associate with themselves not more than three persons, residing within such district. Such persons shall be elected by the Committee every year in such manner as may be prescribed by rules made by the Corporation in this behalf. Such associated members shall hold office for one year and shall be entitled to vote.

Primary Education Standing Committee.

73. (1) The Corporation shall appoint a Standing Committee, to be called the Primary Education Standing Committee to advise them in regard to all matters relating to primary education in Calcutta.

(2) Such Committee shall consist of not more than six Councillors or Aldermen and of such other persons (not exceeding three in number), as the Corporation may from time to time and for such period as they think fit, by a specific resolution, associate with the Committee.

(3) Persons so associated with the Committee shall have a right to vote at meetings of the Committee, and shall be deemed to be members thereof for all purposes during the said period.

Sub-committees of Standing Committees

74. (1) Any Standing Committee of the Corporation may appoint one or more Sub-committees for any purpose referred to them which, in their opinion, can be more usefully carried out by a Sub-committee.

PART III.

FINANCE.

CHAPTER VI.

THE MUNICIPAL FUND.

Municipal Fund to be sole and to be held in trust.

80. There shall be one Municipal Fund, and it shall be held by the Corporation in trust for the purposes of this Act, subject to the provisions therein contained.

Credit of moneys to Municipal Fund.

81. (*1*) All moneys realized or realizable under this Act shall be credited to the Municipal Fund.

(*2*) The balances standing at the credit of the several municipal funds of the Corporation at the commencement of this Act, and all interest and profits arising from any investment and from any transaction in connection with any of the said municipal funds shall be transferred to the said Municipal Fund.

Receipt of moneys and deposit in bank.

82. All moneys payable to the credit of the Municipal Fund shall be forthwith paid into the Imperial Bank of India to the credit of an account which shall be styled "the account of the Municipal Fund of the City of Calcutta":

Provided that, with the sanction of the Local Government, any moneys accruing from any of the several funds of the Corporation, which, at the commencement of this Act, are held in deposit by any bank or banks in Calcutta other than the Imperial Bank of India may be left in such deposit by the Corporation for such period as they think fit.

Drafts on the Municipal Fund.

83. (*1*) Subject to the provisions of sections 18, 118 and 119, no payment shall be made by the Imperial Bank of India out of the Municipal Fund except upon a cheque signed—

(*a*) by any two of the following persons, namely :—

(*i*) the Executive Officer,

(*ii*) the Deputy Executive Officer,

(*iii*) the Secretary,

(*iv*) the Chief Accountant, or,

(Part III.—Chapter VI.—The Municipal Fund.—Sections 89—92.)

can be made without unduly interfering with the regular working of the municipal administration.

(*2*) The cost of all work so executed and of the establishment engaged in executing the same shall be paid by the Local Government and credited to the Municipal Fund.

Compensation to the Tollygunge, and South Suburban Municipalities.

89. (*1*) The Corporation shall pay from the Municipal Fund to the Commissioners of the Tollygunge Municipality two thousand six hundred and thirty-two rupees to compensate them for the expenditure incurred by them on local drainage within the area of the Ballygunge Pumping station and the High Level Outfall Sewer added to Calcutta.

(*2*) From the commencement of this Act, the Corporation shall pay annually from the Municipal Fund for ten years to the Commissioners of the South Suburban Municipality the sum of eight thousand rupees, being approximately, at the commencement of this Act, one-half of the difference between the gross revenue obtained as rates and taxes from, and the amount expended on, that portion of the area known as the New Dock Extension Area which was formerly comprised within the said municipality and which forms part of the area added to Calcutta.

Special payments on improvements of the area which formed the Maniktala, Cossipur-Chitpur, and Garden Reach Municipalities.

90. The Corporation shall, beginning from the third year after the commencement of this Act, spend annually for ten years a sum of not less than one lakh of rupees on the execution of original improvement works within the area which formed the Maniktala Municipality before the commencement of this Act, a sum of not less than a lakh of rupees on the execution of original improvement works within the area which formed the Cossipur-Chitpur Municipality at the commencement of this Act and a sum of not less than a lakh of rupees on the execution of original improvement works within the area which formed the Garden Reach Municipality at the commencement of this Act.

Expenditure on primary education.

91. The Corporation shall spend annually a sum of not less than a lakh of rupees for the purpose of promoting primary education among boys between the ages of six and twelve years and girls between the ages of six and ten years residing in Calcutta.

Investment of surplus money.

92. (*1*) Surplus moneys at the credit of the Municipal Fund, which cannot immediately or at an early date be applied to the purposes of this Act, may from time to time be deposited at interest or placed in current account in the Imperial Bank of India, or in any other bank or banks in Calcutta which may be approved by the Local Government, or invested in any of the securities or debentures mentioned in section 112, sub-section (*1*):

Provided that, where any money is placed in current account under this sub-section with any bank or banks other than the Imperial Bank of India, no cheques shall be drawn by the Corporation against such current account, except in favour of the Imperial Bank of India.

(*2*) The loss, if any, arising from any such deposit or investment shall be debited to the Municipal Fund.

(*Part III.*)

CHAPTER VIII.

LOANS.

Power to Corporation to borrow money

97. (*1*) The Corporation may, in pursuance of a resolution passed at a meeting, from time to time raise a loan, by the issue of debentures or otherwise on the security of the consolidated rate, or of all or any of the taxes, fees and dues authorized by this Act (or of both the said rate and all or any of the said taxes, fees and dues), of any sums of money which may be required—

(*a*) for the construction of works under this Act, or

(*b*) for the acquisition of land for the purposes of this Act, or

(*c*) to pay off any debt due to the Government, or

(*d*) to repay a loan raised under this Act:

Provided as follows :—

(*i*) no loan shall be raised without the previous sanction of the Local Government;

(*ii*) the rate of interest to be paid for any loan, and the terms (as to the time and method of repayment, and otherwise) upon which any loan is to be raised, shall be subject to the approval of the Local Government;

(*iii*) the period within which a loan is to be repaid shall in no case exceed sixty years; and

(*iv*) no loan exceeding in amount twenty-five lakhs of rupees shall be raised unless the terms, including the date of floatation, of such loan have been approved by the Government of India.

(*2*) When any sum of money has been borrowed under sub-section (*1*),—

(*i*) no portion thereof shall, without the previous sanction of the Local Government, be applied to any purpose other than that for which it was borrowed, and

(*ii*) no portion of any sum of money borrowed under clause (*a*) of sub-section (*1*) shall be applied to the payment of salaries or allowances to any municipal officers or servants, other than those who are exclusively employed upon the works for the construction of which the money was borrowed.

Determination of sums to be borrowed.

98. The Corporation shall, at a meeting to be held on or before the twenty-second day of March in each year, after considering the Executive Officer's proposals in this behalf, determine, subject to the provisions of this Act, what sums of money (if any) shall be borrowed under section 97 in the next ensuing year.

(Part III.—Chapter VIII.—Loans.—Section 108.)

Provisions regarding loans raised between the 1st April, 1881, and the commencement of the Calcutta Municipal (Loans) Act, 1914.

108. In respect of all loans raised by the Corporation between the first day of April, 1881, and the commencement of the Calcutta Municipal (Loans) Act, 1914, the following provisions shall have effect, namely :— Ben. Act IV of 1914.

(*1*) The Corporation shall maintain a Sinking Fund in respect of all such loans, and shall pay into such Fund the following sums :—

(*a*) on the first day of January and the first day of July in each year, in respect of such of the said loans as were repaid before the thirty-first day of March, 1914, a sum representing four *per cent. per annum* on the amount of each of such loans, such payments to be continued, in the case of each of such loans, until the expiry of a period of forty-seven years from the date on which the loan was raised, and

(*b*) on the first day of January and the first day of July in each year, in respect of such of the said loans as have not been repaid before the thirty-first day of March, 1914, a sum representing one *per cent. per annum* on the amount of each of such loans, until the loan is repaid, and

(*c*) on the first day of January and the first day of July in each year, for a period of ten years, with effect from the first day of July, 1914, the sum of sixty-six thousand rupees.

(*2*) When any of the said loans hereafter falls due for repayment, it shall be repaid—

(*i*) from the sums which have accumulated in the Sinking Fund maintained under clause (*1*) and in Sinking Fund A maintained before the commencement of the Calcutta Municipal (Loans) Act, 1914, to the extent to which six monthly payments of one *per cent. per annum* on the amount of any such loan would have accumulated at three *per cent* compound interest from the date of its commencement, and Ben. Act IV of 1914

(*ii*) to the extent to which the sums referred to in sub-clause (*i*) of this clause fall short of the sum required for repayment of the loan—from money to be borrowed by the Corporation for the purpose, for any period not exceeding the period by which the term of the original loan falls short of forty-seven years.

(*3*) A separate Sinking Fund shall be established in respect of each amount borrowed under sub-clause (*ii*) of clause (*2*) of this section, and the provisions of sections 106 and 107 shall apply to each such Sinking Fund.

(Part III.—Chapter VIII.—Loans.— Sections 115—117.)

before the commencement of the said Act to the Sinking Fund established for consolidated loans under section 110, sub-section (*4*).

Annual statement by Executive Officer.

115. (*1*) The Executive Officer shall, at the end of each year, prepare a statement showing—

(*a*) the amount which has been invested during the year under section 112,

(*b*) the date of the last investment made previous to the submission of the statement,

(*c*) the aggregate amount of the securities then in the hands of the Corporation, and

(*d*) the aggregate amount which has, up to the date of the statement, been applied under section 114, in or towards repaying loans.

(*2*) Every such statement shall be laid before a meeting of the Corporation and published in the *Calcutta Gazette.*

Priority of payments for interest and repayment of loans over other payments.

116. All payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation.

Annual examination of Sinking Funds.

117. (*1*) All Sinking Funds established under this Act shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the value of the securities belonging thereto are actually equal to the amount which should be at the credit of such funds had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom.

(*2*) The amount which should be at the credit of a Sinking Fund shall be calculated on the basis of the present value of all future payments required to be made to such fund under the provisions of this Act, on the assumption that all investments are regularly made and the rate of interest as originally estimated is obtained therefrom.

The value of securities belonging to a Sinking Fund shall be their current value unless they fall due for redemption at par or above before maturity of the Fund in which case their current value shall be taken as their redemption value, except in the case of Calcutta Municipal Debentures which shall always be valued at par, provided that the Corporation shall make good immediately any loss which may accrue on the actual sale of such debentures at the time of the repayment of the loan.

(*3*) The Corporation shall forthwith pay into any Sinking Fund any amount which the Accountant-General may certify to be deficient, unless the Local Government specially sanction a gradual readjustment.

(*4*) If the cash and the value of the securities at credit of any Sinking Fund are in excess of the amount which should be at its credit, the Accountant General shall certify the amount of such excess sum, and the Corporation may thereupon transfer the excess sum to the Municipal Fund.

PART IV.

TAXATION.

CHAPTER X.

THE CONSOLIDATED RATE.

Imposition of consolidated rate.

Power to Corporation to impose consolidated rate.

124. A consolidated rate not exceeding twenty-three *per cent.* on the annual valuation determined under this chapter may be imposed by the Corporation upon all lands and buildings in Calcutta for the purposes of this Act.

Amount of consolidated rate, how to be fixed.

125. The amount of the said rate shall be fixed annually, in the manner provided in Chapter VII, with reference to the requirements of the Municipal Fund.

Exemptions.

Exemptions from consolidated rate.

126. (*1*) Buildings used exclusively for purposes of public worship, and public burial or burning grounds or other places for the disposal of the dead duly registered under Chapter XXXI, shall be exempt from the consolidated rate;

and the Corporation may either wholly or partially exempt from the consolidated rate any land or building used exclusively for purposes of public charity:

Provided that the following land and buildings shall not be deemed to be used exclusively for public worship or for purposes of public charity within the meaning of this section, namely,—

(*a*) land or buildings in or on which any trade or business is carried on; and

(*b*) land or buildings in respect of which rent is derived, whether such rent is or is not applied exclusively to religious purposes or purposes of public charity.

(*2*) Open spaces and parade grounds, which are the property of Government and over which, when not required for military purposes, the public are allowed to have free access, shall be exempted from the consolidated rate, if the Local Government so direct.

(*3*) The Corporation may exempt the owner of any hut from payment of the whole or any portion of the consolidated rate payable in respect of such hut, and in any such case they may exempt the owner of the land on which the hut is built, or not, as they think fit.

(*4*) The Corporation may, by resolution, exempt from the consolidated rate all lands and buildings the annual valuation of which, as determined under this chapter, does not exceed twenty rupees or such smaller sum as may be specified in such resolution:

(*Part IV.—Chapter X.—The consolidated rate.—Sections 130, 131.*)

the ground that it is unoccupied, but both the owner's and the occupier's share of the consolidated rate shall be payable in full as long as such land or building belongs to the Board and is assessed under section 128.

Revaluation of land or building vested in the Board after execution of an improvement scheme.

130. When the Board has executed any scheme referred to in section 128, and the streets (if any) laid out or altered and the open spaces (if any) provided in executing such scheme have vested in the Corporation under section 65 of the Calcutta Improvement Act, 1911, the valuation made under section 128 shall terminate, and any land or building acquired by purchase or otherwise by the Board for the execution of such scheme and remaining vested in the Board at the termination of such valuation shall be revalued under section 127, and such revaluation shall remain in force for such period as remains unexpired in the ward in which it is included. Ben. Act V of 1911.

Assessment of annual value, and duration of assessment.

131. (*1*) The valuation of any land or building situated in the several wards, the respective numbers, names and boundaries of which are specified in Schedule VII, which has been made before the commencement of this Act, whether under the Bengal Municipal Act, 1884 or under the Calcutta Municipal Act, 1899 and which is in force at the commencement of this Act, shall remain in force and shall be deemed to be the valuation for the assessment of the consolidated rate on such land or building under this Act, until such time as the Executive Officer may make a fresh valuation of the lands and buildings in each such ward under this Act, and the annual value of such lands and buildings in each such ward shall, after such assessment has been made by the Executive Officer, have effect for a period of six years and may be revised thereafter by the Executive Officer at the termination of successive periods of six years. Ben. Act III of 1884. Ben. Act III of 1899.

(*2*) Notwithstanding anything contained in sub-section (*1*), the following conditions shall apply in the several cases hereinafter specified, namely,—

Bustees

(*a*) *bustees* with the huts upon them may be valued annually at the discretion of the Executive Officer, and shall be so valued on the application of the owner; and when such *bustees* are not re-valued, the former valuation shall remain in force from year to year until a re-valuation is made;

Unvalued lands and buildings.

(*b*) any land or building the valuation of which has been cancelled on the ground of irregularity, or which for any other reason has no annual value assigned to it under this Act, may be valued by the Executive Officer at any time during the currency of the period prescribed in respect of such land or building by sub-section (*1*), and such valuation shall remain in force, and the consolidated rate shall be levied according to it, for the unexpired portion of such period;

(Part IV.—Chapter X.—The consolidated rate.—Sections 134, 135.)

(*ii*) if, as the result of such subdivision, there are separate allotments of such land, building or portion and if such allotments are made entirely independent and capable of separate enjoyment but not in conformity with the provisions of this Act, or of any rules or by-laws made thereunder, relating to buildings, the Executive Officer may, if he thinks fit, assess such portions separately after assigning to them separate numbers under this chapter:

Provided that by such separate assessment the total assessment for the entire premises shall not be increased;

(*iii*) if such separated portions of such land, building or portion are, or are made, entirely independent and capable of separate enjoyment in conformity with the provisions of this Act, or of any rules or by-laws made thereunder, relating to buildings, the Executive Officer shall assess each portion separately by assigning a separate number thereto:

Provided that by such separate assessment the total assessment for the entire premises shall not be increased:

Provided also that such apportionment or separation of the numbers and assessment, as the case may be, shall remain in force and the consolidated rate shall be levied accordingly until the expiration of the said period.

Assessment in case of amalgamation of premises.

134. If any land or building, bearing two or more municipal numbers, or portions thereof, be amalgamated into one or more new premises, the Executive Officer shall assess them, on amalgamation, after assigning to them one or more numbers, as the case may be, for the purposes of this chapter:

Provided that no assessment on amalgamation of premises shall be made by the Executive Officer unless there is a cause for the re-valuation of any of such premises except on an application being made to him by the owner or owners thereof, in which case such assessment, if made, shall remain in force for the unexpired period of the valuation of the ward in which the said premises are included:

Provided also that the total assessment on amalgamation shall not be greater than the sum of the previous assessments of the several premises amalgamated.

Power to Executive Officer separately to assess outhouses and portions of buildings.

135. The Executive Officer may, in his discretion assess any outhouse appurtenant to a building, or any portion of a building, separately from such building or the other portions of such building, as the case may be; and, when any outhouse or portion of a building is so separately assessed, the same shall, for the purposes of this chapter, be deemed to be a separate building.

(*Part IV.—Chapter X.—The consolidated rate.—*
Sections 144—146.)

(*2*) The particulars mentioned in sub-section (*1*) may be contained in as many books as the Executive Officer may from time to time determine, which shall together constitute the municipal assessment-book.

(*3*) When the name of the owner or occupier of any premises is not known, it shall be sufficient to designate him in the said assessment-book as "the owner" or "the occupier", as the case may be.

Entry of names of owners and occupiers in assessment-book.

144. (*1*) Any owner or occupier may at any time apply to the Executive Officer to have his name entered as owner or occupier, as the case may be, in the assessment-book; and the Executive Officer shall, after giving the parties interested an opportunity of being heard, unless there is sufficient reason to refuse such application, cause such name to be entered in the assessment-book:

Provided that if such application is refused, the reason for the refusal shall be recorded in writing.

(*2*) Where there are gradations of owners or occupiers, and doubt exists as to who is entitled to have his name entered in the assessment-book as owner or occupier of the premises, the Executive Officer shall, after giving the parties interested an opportunity of being heard, determine which of the several owners or occupiers is so entitled, and his decision shall remain in force for the purposes of this Act unless and until it is set aside by the order of a competent Court.

(*3*) No owner or occupier whose name is not entered in the assessment-book shall be entitled to object that any bill, notice of demand, warrant or other notice of any kind required by this Act to be served on the owner or occupier of any land or building, has not been made out in his own name.

Notice of transfers of title, when to be given.

145. Whenever the title in any land or building, or in any part or share of any land or building, is transferred, the transferee shall, within three months after the execution of the instrument of transfer, or, if no such instrument be executed, after the transfer is effected, give notice in writing of such transfer to the Executive Officer:

Provided that in the event of the death of the person in whom such title vests, the person to whom, as heir or otherwise, the title of the deceased is transferred by descent or devise, shall, within one year from the death of the deceased, give notice in writing of such transfer to the Executive Officer.

Power to Executive Officer to amend assessment-book.

146. (*1*) Notwithstanding anything contained in section 142, the Executive Officer may at any time amend the assessment-book—

(*a*) by inserting therein the name of any person whose name ought, in his opinion, to be so inserted, or by inserting any land or building which is, in his opinion, liable to the consolidated rate, or by inserting a valuation when the land or building liable to be valued has not been valued; or

(Part IV.—Chapter X.—The consolidated rate.— Sections 152—158.)

such land from the operation of this proviso on the ground that it is necessary for the land to be left open for the purpose of ventilation, or that in their opinion special circumstances exist which render it impracticable for the owner or lessee to utilize the land as a building site.

Refund of occupier's share of consolidated rate.

152. Any person who has, in respect of any land or building which has been assessed to the consolidated rate, paid the occupier's share of such rate for the whole of any quarter, shall be entitled to a refund of the rate so paid for any period in that quarter during which he did not occupy such land or building, provided that such person has given notice in writing of the facts to the Executive Officer.

Notice under section 151 or section 152, when to be delivered.

153. Every notice referred to in section 151 or section 152 shall be given during the period for which the land or building is unoccupied and unproductive of rent, or during the period of the vacancy, as the case may be; and such period shall be calculated from the date on which such notice is delivered at the municipal office:

Provided that, if the notice is delivered within seven days of the vacancy, the remission shall be allowed with effect from the date of the vacancy.

Application for refund, when to be made.

154. No refund of any amount shall be made under section 151 or section 152 unless the same is applied for within one year from the date on which the amount was paid.

Notice of re-occupation, when to be given.

155. Whenever any land or building which has been assessed to the consolidated rate and has been unoccupied is re-occupied, the person liable to pay the owner's share of the rate in respect of such land or building shall, within fifteen days from the date of re-occupation, give notice thereof in writing to the Executive Officer.

Rate payable from date of re-occupation.

156. Whenever any land or building which has been assessed to the consolidated rate and has been unoccupied is re-occupied during any quarter, the occupier's share of the rate in respect of such land or building shall be payable from the date of such re-occupation.

Power of Executive Officer to levy entire rate from owner in certain cases.

157. If any land or building is ordinarily occupied by more than one person holding in severalty, or is valued at less than two hundred rupees, the Executive Officer may, notwithstanding anything contained in section 149, levy the entire consolidated rate from the owner of such land or building.

Recovery from occupier of portion of rate paid by owner under section 157.

158. When the entire consolidated rate is paid by the owner of any land or building under section 157, such owner may, if there be but one occupier of the land or building, recover from such occupier half of the rate so paid, and may, if there be more than one occupier, recover from each occupier half of such sum as bears to the entire amount of rate so paid by the owner the same proportion as the value of the portion of the land or building in the occupation of such occupier bears to the entire value of such land or building.

(Part IV.)

CHAPTER XI.

TAX ON CARRIAGES AND ANIMALS.

Carriages and animals specified in Schedule VIII.

Tax on carriages and animals as specified in Schedule VIII.

165. (*1*) A tax, at rates not exceeding those respectively prescribed in Schedule VIII, shall be imposed upon all carriages and animals specified in that schedule and kept or used in Calcutta, except—

(*a*) carriages kept for sale by *bonâ fide* dealers in such carriages and not used for any other purpose;

(*b*) carriages and animals belonging to the Government and maintained—

(*i*) for the use of the Governor of Bengal or his staff or household; or

(*ii*) for police or military purposes;

(*c*) carriages and animals maintained by any authority for the purposes of a fire-brigade;

(*d*) carriages and animals certified by the Commissioner of Police to be ordinarily used by the owners thereof for police purposes;

(*e*) tram-cars employed in working street tramways, and exempted under any contract with the Corporation; and

(*f*) horses which any person exempted from the operation of any municipal tax by an order issued under section 3 of the Municipal Taxation Act, 1881, is bound by the regulations of the service to which he belongs, to keep. XI of 1881.

(*2*) The rates at which the said tax is to be imposed shall be determined annually in the budget estimate prepared under Chapter VII.

Tax, when payable.

166. The tax imposed under section 165 shall be payable half-yearly in advance.

Obligation to furnish statements, and payment and remission of tax.

167. (*1*) The owner or the person in charge of any carriage or animal liable to the tax imposed under section 165 shall, before the first day of May and the first day of November in each year,—

(*a*) forward to the municipal office a written statement, signed by him, containing a description of all carriages and animals owned by him or in his charge which are so liable, and

(*b*) at the same time pay to the Corporation the tax payable for the current half-year in respect of the carriages and animals specified in such statement.

(*2*) Any person who becomes the owner or takes charge during any half-year of any carriage or animal liable to the tax imposed under section 165 shall,

(Part IV.—Chapter XI.—Tax on carriages and animals.—Section 174.)

(3) The owner or person in charge of any dog liable to the tax imposed under sub-section (1) shall, before the first day of May in each year,—

(a) forward to the municipal office a list, signed by him, of all dogs owned by him or in his charge which are so liable, and

(b) at the same time pay to the Corporation the tax payable for the current year in respect of every such dog.

(4) Any person who, in the course of any year, becomes the owner or takes charge of any dog shall, within one week of his so becoming owner or taking charge, furnish a like statement and pay to the Corporation the tax payable for that year in respect of such dog:

Provided that the tax payable in respect of any dog shall not be levied twice for the same year.

License and number-ticket for, and disposal of, dogs.

174. (1) When any person has paid to the Corporation the tax payable in respect of any dog, the Corporation shall—

(a) grant him a license to keep such dog during the current year, and

(b) provide him with a number-ticket, the number whereof shall be specified in the said license.

(2) The owner or person in charge of any dog so licensed shall at all times cause the said number-ticket to be kept attached to the collar or otherwise suspended from the neck of the dog.

(3) Any dog which has no such number-ticket for the then current year so attached or suspended—

(i) shall be presumed to be an unlicensed dog, and

(ii) may be seized by the police or by any person duly authorized by the Corporation in this behalf, and detained until the tax due (if any) has been paid.

(4) If any person, within seven days from the date of such seizure, satisfies the Corporation that he is the owner or keeper of such dog, the Corporation shall order it to be delivered to such person on payment of the tax due (if any), together with the costs incurred by the Corporation in keeping the dog.

(5) If, within the said seven days, no person satisfies the Corporation that he is the owner or keeper of the dog or pays the said tax and costs, the Corporation may cause the dog either—

(a) to be destroyed, or

(b) to be sold and the sale-proceeds, after deducting therefrom the said tax and costs (together with the costs of the sale) to be paid to any person who, within six months from the date of such sale, establishes, to the satisfaction of the Corporation, his claim to such proceeds.

(*Part IV.*)

CHAPTER XIII.

SCAVENGING-TAX.

License to be taken out half-yearly, and fee to be paid therefor.

179. Every person who exercises in Calcutta any of the callings indicated in Part I of Schedule IX shall every half-year take out a license and pay for the same a fee, to be calculated—

(*a*) according to the average number of animals kept by him in the exercise of such calling, as determined from time to time by the Corporation, or

(*b*) in the case of the owner or occupier of a market, according to the average quantity of offensive matter and rubbish removed daily, as determined from time to time by the Corporation,

at the rates mentioned in Part II of the said schedule :

Provided that the Corporation may remit or refund the whole or any portion of the fee so payable by any person in respect of any half-year if they are satisfied that such person himself removes the offensive matter and rubbish accumulating on his premises or has exercised his said calling for a portion only of such half-year.

Grant and contents of licenses.

180. (*1*) Every license mentioned in section 179 shall, in addition to the particulars required by section 498, sub-section (*1*), specify—

(*a*) the calling in respect of which it is granted ; and

(*b*) the animals in respect of which it is granted, or, in the case of a market, the average quantity of offensive matter and rubbish removed daily, as determined by the Corporation.

(*2*) Every such license shall be taken out not later than the first day of June or the first day of December in each year, as the case may be.

(*Part VI.—Chapter XV.—Tax on carts.—Sections 184—186.*)

Fees for registration of carts.

184. (*1*) The fee payable for each registration under section 183 shall be as follows :—

	Rs.
(*a*) for every cart propelled by mechanical power ...	20, and a further sum of Rs. 5 per ton of the full carrying capacity of the cart.
(*b*) for every trailer (being a cart) drawn by a cart referred to in clause (*a*) ...	25
(*c*) for every other cart ...	4

and an additional charge of one rupee shall also be payable in each case for the number-plate to be affixed to the cart or trailer:

Provided that, if such number-plate is returned to the municipal office in serviceable condition, the said additional charge shall be refunded or set off against the charge leviable for a new number-plate.

(*2*) The Corporation may, in their discretion, remit any portion of the fee leviable under sub-section (*1*) in respect of any cart if they are satisfied that the same has been kept or used for a portion of the half-year only.

(*3*) When the ownership of any registered cart is transferred during any half-year, it shall be re-registered in the name of the person to whom it has been transferred; and a fee of four annas shall be paid for every such re-registration.

Division of proceeds of registration fees, etc.

185. After deduction of the costs incurred on account of the registration of carts and the supply of number-plates under this chapter, the total net proceeds of the fees and charges received by the Corporation for such registration shall be divided between the Corporation of Calcutta and the Commissioners of the Municipality of Howrah and such other municipalities in the neighbourhood of Calcutta or of the Municipality of Howrah as the Local Government shall declare, by notification in the *Calcutta Gazette*, to be entitled to a share in such proceeds, in such proportion as the Local Government may from time to time determine.

Seizure and sale of unregistered carts and application of proceeds of sale.

186. (*1*) If any person owns or keeps any cart not duly registered under section 183, the Corporation may seize such cart, together with the animals (if any) drawing it, and detain the same in a place to be appointed by them in this behalf:

Provided that no cart shall be so seized while conveying passengers or goods.

(*2*) If any cart or animals so seized be not claimed within ten days from the date of the seizure, it or they may be sold by auction by order of a Magistrate.

(Part IV.—Chapter XVI.—Recovery of the consolidated rate and other taxes.—Sections 192—195.)

(*b*) if such person be the occupier of any premises in respect of which the sum is due, by distress and sale of any movable property found on the said premises:

Provided that, when the premises in respect of which the default is committed are a place of business, and the movable property distrained under clause (*b*) is shown to the satisfaction of the Corporation to have been left there (by some person other than the person referred to in that clause) for repairs or safe custody in the ordinary course of business, it shall be released.

(*2*) The movable property of any person liable for the payment of any sum, for the recovery of which a warrant has been issued under sub-section (*1*), may be distrained wherever the same may be found in Calcutta.

(*3*) For every warrant issued under this section, a fee shall be charged at the rate mentioned in that behalf in Schedule XII, and the amount of the said fee shall be included in the costs of recovery.

Power to Corporation to remit certain fees.

192. The Corporation may, in their discretion, remit the whole or any part of any fee chargeable under section 190, sub-section (*2*), or section 191, sub-section (*3*).

Power to officer to break open door or window.

193. Any officer charged with the execution of a warrant of distress issued under section 191, may, if authorized by a general or special order in writing by the Corporation, between sunrise and sunset break open any outer or inner door or window of a building in order to make the distress—

(*a*) if he has reasonable ground for believing that such building contains property which is liable to such distress; and

(*b*) if, after notifying his authority and purpose, and duly demanding admittance, he cannot otherwise obtain admittance:

Provided that such officer shall not enter, or break open the door of, any apartment appropriated to the use of females, until he has given not less than three hours' notice of his intention and has given such females an opportunity to withdraw.

Officer executing warrant to make inventory and notice of sale.

194. The officer charged with the execution of a warrant of distress issued under section 191, shall forthwith make in the presence of two witnesses an inventory of the movable property which he seizes under such warrant, and shall at the same time give a written notice, in the form in Schedule XIII, or in a form to the like effect, to the person in possession thereof at the time of seizure, that such property will be sold as therein mentioned.

Power to said officer to take away property if forcible removal apprehended.

195. If there is reason to believe that any property seized under a warrant of distress issued under section 191 is likely, if left in the place where it is found, to be removed by force, the officer executing the warrant may take it to the municipal office or to any place appointed by the Corporation.

(Part IV.—Chapter XVI.—Recovery of the consolidated rate and other taxes.—Sections 203—207.)

Power to Corporation to take summary proceedings against persons about to leave Calcutta.

203. (*1*) If the Corporation at any time have reason to believe that any person from whom any sum is due on account of the consolidated rate is about forthwith to remove from Calcutta, the Corporation may direct the immediate payment by such person of the sum so due and cause a bill for the same to be presented to him.

(*2*) If, on presentation of such bill, the said person does not forthwith pay the sum due by him, the amount shall be leviable by distress and sale under the provisions of this chapter:

Provided that—

(*a*) it shall not be necessary to serve upon the said person any notice of demand, and

(*b*) the warrant of distress may be issued and executed without any delay.

Power to Corporation to sue for arrears.

204. It shall be competent to the Corporation instead of proceeding against a defaulter by distress and sale under the provisions of this chapter, or after a defaulter has been so proceeded against unsuccessfully or with only partial success, to recover from him by suit, in any Court of competent jurisdiction, any sum due, or the balance of any sum due, as the case may be, on account of the consolidated rate, together with all costs.

The consolidated rate to be a first charge on premises.

205. The consolidated rate due from any person in respect of any land or building shall, subject to the prior payment of the land-revenue (if any) due to the Government thereupon, be a first charge upon the said land or building and upon the movable property (if any) found within or upon such land or building and belonging to the said person.

Other taxes.

Power to Corporation to prosecute or serve notice of demand.

206. (*1*) When any sum is due from any person on account of—

(*a*) the tax on carriages and animals,

(*b*) the tax on professions, trades and callings, or

(*c*) the scavenging-tax,

the Corporation may either prosecute such person under section 492 or cause to be served on him a notice of demand in the form in Schedule X or in a form to the like effect.

(*2*) The provisions of section 190, sub-section (*2*), section 192 and clause (*a*) of section 202 shall, with all necessary modifications, be deemed to apply to every such notice of demand.

Election by defaulter to pay or to appear before Magistrate or Corporation.

207. Within seven days after the service on any person of a notice of demand under section 206, such person may—

(*a*) pay the sum demanded together with any fee imposed under section 190, sub-section (*2*), or

PART V.

THE PUBLIC HEALTH, SAFETY AND CONVENIENCE.

CHAPTER XVII.

WATER-SUPPLY.

Proprietary rights of the Corporation.

Public water-works, etc., vested in the Corporation.

214. All public tanks, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, taps and other water-works, whether made, laid or erected at the cost of the Municipal Fund, or otherwise, and all bridges, buildings, engines, works, materials and things, connected therewith or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank, shall be vested in the Corporation.

General duties of the Corporation in respect of the supply of water.

Corporation to provide supply of filtered and unfiltered water.

215. (*1*) The Corporation shall provide—

(*a*) a supply of filtered water in all parts of Calcutta, and

(*b*) a supply of unfiltered water—

(*i*) in those parts of Calcutta in which such water is provided at the commencement of this Act, and

(*ii*) in such other parts of Calcutta as they may think fit.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Corporation may discontinue the supply of unfiltered water in any part of Calcutta:

Provided that where the supply of unfiltered water is so discontinued—

(*a*) filtered water may be used for non-domestic purposes and for the purposes mentioned in section 221, and

(*b*) a sufficient quantity of filtered water shall, subject to the provisions of section 223, be supplied for all such purposes, in lieu of the unfiltered water discontinued as aforesaid.

Bathing platforms and public stand-posts.

216. (*1*) The Corporation shall erect sufficient and convenient bathing platforms and public stand-posts for the supply, free of charge, of filtered water for bathing and other domestic purposes.

(*2*) All such bathing platforms and stand-posts shall be supplied with a sufficient quantity of filtered water.

Hydrants, etc., for street-watering, etc.

217. On all distribution pipes in the unfiltered water system and, if the Corporation so direct, also in the filtered water system, suitable hydrants shall be provided for street-watering, fire-extinguishing, washing down hackney-carriage stands, and flushing street-gullies, together with such sluices, branches and appliances as may be necessary for the efficient flushing of the municipal drains.

(Part V.—Chapter XVII.—Water-supply.—Sections 227–229.)

and may deduct from the rent payable by him to such owner the expenses incurred by him in respect of such works, except so much of such expenses as may have been incurred under the circumstances mentioned in clause (*b*) of sub-section (*2*) of section 225.

Arbitration in case of difference between owner and occupier.

227. (*1*) If there is any difference between the owner and the occupier of any premises respecting the cost or the sufficiency of the water-supply thereof, either party may refer such difference to the Corporation, and the written award of the Corporation shall be binding on such owner and occupier.

(*2*) There shall be payable to the Corporation, by the person making a reference under sub-section (*1*), a fee at the rate of two rupees for every one hundred rupees of the monthly rent of the said premises :

Provided that such fee shall in no case exceed ten rupees.

Power to Corporation to direct owner to obtain sufficient supply of water from nearest main.

228. Whenever it appears to the Corporation that any premises are without a sufficient supply of water, and that such a supply of water can be furnished from a main not more than one hundred feet distant from the nearest part of such premises, the Corporation may, by written notice, require the owner to obtain such supply and for that purpose to lay down such pipes, hydrants, stand-posts and other fittings and execute all such other works as the Corporation may direct :

Provided that—

(*a*) in any case in which the owner satisfies the Corporation that he is too poor to bear the cost of the said works, the Corporation may pay the whole or any part of such cost from the Municipal Fund ; and

(*b*) if any premises in respect of which any notice is issued under this section are occupied by a person other than the owner, the occupier shall be bound, if the Corporation so direct, to make to the owner, in respect of all works executed in pursuance of such notice, the payments prescribed by clause (*a*), or clauses (*a*) and (*b*), as the case may be, of sub-section (*2*) of section 225.

Water-supply not to be directly connected to huts.

229. Notwithstanding anything contained in this chapter, the municipal water-supply shall not be directly connected to any hut, but a sufficient supply of unfiltered water shall be provided for the flushing of any connected privy attached to a hut :

Provided that the Corporation may supply a direct filtered water connection to a hut on such conditions as they may impose and subject to such rules as may be made by them in this behalf.

(Part V.—Chapter XVII.—Water-supply.—Sections 236—238.)

Provided that any occupier of any such premises who has provided a separate meter attached to the service-pipe thereof, shall not be liable to pay any proportionate share as aforesaid, but shall pay for any excess, which such meter shows to have been supplied to him in accordance with the provisions of section 238 :

Provided also that, on a representation from any ten persons within the block who are held liable for the cost of such excess, the Corporation shall forthwith take into consideration the question of affixing a meter under the provisions of section 237 to the service-pipe attached to any premises within the block, the occupier of which premises is alleged or is suspected by such persons to be wasting filtered water.

Prevention of waste of filtered water in premises.

236. (*1*) Whenever the Corporation have reason to believe that, as the result of defects in pipes, taps or fittings connected with the water-supply, the filtered water-supply to any premises is being wasted, they may, by written notice, require the owner and occupier of the premises, within a period of four days after service of the notice, to repair and make good any defects in the pipes, taps or fittings connected with the water-supply, so as to put a stop to such waste.

(*2*) If, after the expiration of the said period of four days, the Corporation have reason to believe that waste still continues, they may cut off the supply of filtered water to the said premises.

Power to Corporation to provide water-meters.

237. (*1*) The Corporation may, in their discretion, provide a water-meter and attach the same to the service-pipe of any premises connected with the municipal filtered water-supply.

(*2*) The expense of providing and attaching a meter under sub-section (*1*) shall be paid out of the Municipal Fund.

Payment by occupier for filtered water supplied in excess of statutory allowance.

238. (*1*) When a meter has been attached to any premises, all filtered water which is shown thereby to have been supplied in excess of the free allowance to which the occupier is entitled under section 223 shall be paid for by him at the rate of one rupee for every three thousand gallons.

(*2*) The Corporation may cause the meter to be read at any time during each quarter, but as nearly as practicable at intervals of three months :

Provided that if, during any quarter, the assessment of such premises is altered, the said free allowance shall be calculated on the consolidated rate payable on the assessment as altered.

(*3*) If such premises are ordinarily occupied by two or more persons holding in severalty, the owner shall be liable for water supplied in excess as prescribed

(*Part V.—Chapter XVII.—Water-supply.—Sections 243—245.*)

Supply of water to persons residing out of Calcutta or for use without Calcutta.

243. (*1*) The Corporation may, in their discretion, allow any person not residing in Calcutta to take or be supplied with water on such terms as they may from time to time prescribe.

(*2*) No person shall, without the written permission of the Corporation, take or cause to be taken for use without Calcutta water supplied under this chapter:

Provided that this sub-section shall not apply to water taken by travellers for use on a journey.

Supplemental provisions.

General powers of the Corporation in regard to water-mains.

244. The Corporation shall have the same powers and be subject to the same restrictions for carrying water-mains in or without Calcutta as they have and are subject to for carrying drains in or without Calcutta.

Power to Corporation to cut off or turn off supply of water to premises.

245. (*1*) Notwithstanding anything contained in this chapter, the Corporation may cut off the connection between any water-works of the Corporation and any premises to which water is supplied from such works, or may turn off such supply, in any of the following cases, namely :—

(*a*) if the premises are unoccupied ;

(*b*) if, after receipt of a written notice from the Corporation requiring him to refrain from so doing, the owner or occupier of the premises continues to use the water or to permit the same to be used, in contravention of this Act or of any rule or by-law made thereunder ;

(*c*) if the occupier of the premises contravenes section 220, sub-section (*2*), or section 243, sub-section (*2*) ;

(*d*) if the occupier refuses to admit any municipal officer or servant duly authorized in that behalf into the premises for the purpose of making any inspection under this chapter or under any rule or by-law relating to water-supply made under this Act, or prevents such municipal officer or servant from making such inspection ;

(*e*) if the owner or occupier of the premises wilfully or negligently injures or damages his meter or any pipe or tap conveying water from any works of the Corporation ;

(*f*) if any pipes, taps, works or fittings connected with the supply of water to the premises be found, on examination by the Corporation, to be out of repair to such an extent as to cause so serious a waste of water that, in the opinion of the Executive Officer, immediate prevention is necessary ;

(*g*) if the use of the premises for human habitation has been prohibited under section 381, from the date from which the premises are to be vacated under the order of the Magistrate ;

(Part V.—Chapter XVIII.—Drains, privies and other receptacles for filth.—Sections 252, 253.)

Municipal drains.

Power to Corporation to improve, discontinue, etc., municipal drains, etc.

252. (*1*) The Corporation may—

(*a*) enlarge, arch over, or otherwise improve any municipal drain, or

(*b*) discontinue, close up or destroy any municipal drain which has, in their opinion, become useless or unnecessary, or

(*c*) carry any municipal drain—

(*i*) through, across or under any street or any place laid out as, or intended for, a street, and

(*ii*) (after giving reasonable notice in writing to the owner and occupier) into, through or under any land whatsoever or under any building

in Calcutta or, for the purpose of outfall or distribution of sewage, without Calcutta, or

(*d*) construct any new municipal drain in the place of an existing drain in any land wherein any municipal drain has been already lawfully constructed, or

(*e*) repair or alter any municipal drain so constructed :

Provided that—

(*i*) if, in the exercise of any of the powers conferred by this section, it is proposed to demolish any house-drain, a written notice shall be served upon the owner of such drain ; and

(*ii*) if, by reason of anything done under this section, any person is deprived of the lawful use of any drain, the Corporation shall, as soon as practicable, provide for his use some other drain as effectual as the one which has been discontinued, closed up or destroyed.

(*2*) In the exercise of any power conferred by this section, the Corporation shall create the least practicable nuisance and do as little damage as may be, and shall pay compensation to any person who sustains damage by the exercise of such power.

Private streets, etc., not to be constructed over municipal drain without permission

253. (*1*) Without the written permission of the Corporation—

(*a*) no private street shall be constructed, and

(*b*) no wall or other structure shall be newly erected

over any municipal drain.

(*2*) If any private street be so constructed, or if any wall or other structure be so erected, without such permission, the Corporation may remove or otherwise deal with the same as they may think fit,

(Part V.—Chapter XVIII.—Drains, privies and other receptacles for filth.—Sections 261, 262.)

(*c*) to remove any existing house-drain, or other appliance or thing used or intended to be used for drainage, which is injurious to health.

Power to Corporation to enforce drainage of undrained premises in other cases.

261. When in any case not provided for in section 260 any premises are, in the opinion of the Corporation, without sufficient means of effectual drainage, they may, by written notice, require the owner of such premises to make a house-drain communicating with the nearest municipal drain:

Provided as follows—

(*a*) the cost of constructing that portion of the house-drain so made, which is situate more than one hundred feet from the said premises, shall be paid out of the Municipal Fund; and

(*b*) if, in the opinion of the Corporation, there is no municipal drain within a reasonable distance of such premises, they may, by written notice, require the owner of the premises to construct—

(*i*) a closed cesspool of such material, size and description, and in such position, as they may prescribe, and

(*ii*) a house-drain communicating with such closed cesspool.

Power to Corporation to close or limit the use of house-drain in certain cases.

262. When a house-drain connecting any premises with a municipal drain is sufficient for the effectual drainage of such premises and is otherwise unobjectionable, but is not, in the opinion of the Corporation, adapted to the general drainage system of Calcutta, they may, by written notice addressed to the owner of the premises, direct—

(*a*) that such house-drain be closed, discontinued or destroyed and that any work necessary for that purpose be done; or

(*b*) that such house-drain shall, from such date as they prescribe in this behalf, be used for sewage, offensive matter and polluted water only or for rain-water and unpolluted sub-soil water only:

Provided as follows—

(*i*) no house-drain may be closed, discontinued or destroyed by the Corporation under clause (*a*) except on condition of their providing another house-drain equally effectual for the drainage of the premises and communicating with any municipal drain which they think fit; and

(*ii*) the expenses of the construction of any drain so provided by the Corporation and of any work done under clause (*a*) may be paid out of the Municipal Fund.

(*Part V.—Chapter XVIII.—Drains, privies and other receptacles for filth—Sections 272-274.*).

(*b*) to make such structural or other alterations in the existing privy or urinal accommodation as they may prescribe; or

(*c*) to substitute connected privy or connected urinal accommodation for any service privy or service urinal accommodation:

Provided that where the privy or urinal accommodation of any premises has been and is being used in common by the persons occupying such premises or any other premises or is in the opinion of the Corporation likely to be so used, the Corporation may, if they are of opinion that such accommodation is sufficient to admit of the same being used by all the persons occupying all the said premises, direct that separate privy or urinal accommodation need not be provided on or for such other premises:

Provided also that the Corporation may, if they are of opinion that there is sufficient public latrine accommodation available for the persons occupying the premises, direct that separate privy or urinal accommodation need not be provided for such premises.

Power to Corporation to require provision of privies and urinals for premises used as a market, etc.

272. If it appears to the Corporation that any premises are, or are intended to be, used as a market, railway-station, dock, wharf or other place of public resort, or as a place for the employment of persons exceeding twenty in number, in any manufacture, trade or business, or as workmen or labourers, they may, by written notice, require the owner of such premises to provide such service or connected-privies and urinals for the separate use of persons of each sex as they may prescribe.

Rules for construction, etc., of privies and urinals.

273. Privies and urinals, and all appurtenances thereof, shall be constructed, maintained, repaired, altered and regulated in accordance with—

(*a*) the rules contained in Schedule XV and any by-laws made under this Act relating to privies and urinals and the appurtenances thereof, and

(*b*) requisitions made under such rules and by-laws.

Cost of repair of privy payable out of Municipal Fund in certain cases.

274. (*1*) If, within three years after any privy has been provided or altered with the sanction or on the requisition of any municipal authority duly empowered in that behalf, or of the Corporation under this Act, a requisition is made by the Corporation for the rebuilding or alteration of such privy, the expenses of such rebuilding or alteration shall be paid out of the Municipal Fund.

(*2*) When any notice has been issued under section 271 or Schedule XV in respect of any privy, urinal or group of privies or urinals and the Corporation are satisfied that the owner of the land or building on or in which any such privy or urinal is situated is from poverty unable to pay the whole or part of the expenses of carrying out the work required by the notice they may direct that such expenses, or such portion thereof, as they think fit, be paid out of the Municipal Fund.

(Part V.—Chapter XVIII.—Drains, privies and other receptacles for filth.—Sections 281-284.)

(2) The Corporation may at any time, by written notice, require any person within whose premises there is situated, within fifty feet of any tank, well, water-course or reservoir for the storage of water, any receptacle mentioned or referred to in sub-section (1), to remove such receptacle.

(3) This section shall also apply to any such receptacle, without Calcutta, which is constructed or situated within fifty feet of any reservoir used for the storage of filtered water to be supplied to Calcutta.

General powers and duties of the Corporation.

Power to Corporation to affix shafts or pipes for ventilation of drain or cesspool.

281. For the purpose of ventilating any drain or cesspool, whether vested in the Corporation or not, they may erect upon any premises or affix to the outside of any building, or to any tree, any such shaft or pipe as may appear to them to be necessary.

Power to Corporation to execute work when municipal drains, etc., affected.

282. When a notice has been issued under this chapter or Schedule XV, requiring any person to construct or alter a drain, the Corporation may themselves cause to be constructed or altered so much of the drain as runs through, over or under any municipal drain, public aqueduct or public street, and the expenses thereby incurred shall be paid by the owner of the drain.

Power to Corporation to provide new drains, etc., in executing works.

283. (1) In executing any drainage-works under this chapter, the Corporation shall provide and make, out of the Municipal Fund, a sufficient number of convenient ways, water-courses and drains in substitution for any that may be interrupted, injured or rendered useless by reason of the execution of such works;

and, if any difference arises between the Corporation and the persons affected, the same shall be settled by the Court of Small Causes having jurisdiction in the place where such works are executed, on application to be made to it for this purpose.

(2) The decision of the said Court of Small Causes shall, subject to the provisions of section 6 of the Presidency Small Cause Courts Act, 1882, or section 25 of the Provincial Small Cause Courts Act, 1887, as the case may be, be final. XV of 1882. IX of 1887.

General power to Corporation in respect of house-drains, cesspools, privies and urinals.

284. Subject to the provisions of this chapter and of Schedule XV,—

(a) all house-drains, as well within as without the premises to which they belong, all cesspools and all privies and urinals shall, as regards their site, construction, materials and dimensions and the arrangements for flushing the same, be under the survey and control of the Corporation, and

(b) the Corporation may, by written notice, require the owner of any premises in which any house-drain, cesspool, privy or urinal is situated, to alter, pave, repair or ventilate the same or to keep it in such a state of repair as to admit of its being sufficiently cleaned, or to supply it with water, or connect it with a sewer, or stop up or demolish it.

(*Part V.*)

CHAPTER XIX.

LICENSED PLUMBERS.

Power to Corporation to license plumbers.

288. (*1*) The Corporation may from time to time grant to any person they think fit a license to act as a plumber for the purposes of Chapter XVII or Chapter XVIII.

(*2*) Every such license shall be for a renewable period of three years.

Rules for guidance of plumbers.

289. The Corporation may make rules for the guidance of licensed plumbers, and a copy of all such rules, for the time being in force, shall be written on the back of every license granted under section 288.

Powers and duties of plumber licensed for drainage works.

290. A plumber holding a license for the purposes of Chapter XVIII—

(*a*) may prepare, for the approval of the Corporation, plans and estimates for the drainage of premises;

(*b*) may, with the sanction of the Corporation, carry out drainage works in accordance with this Act and the rules or by-laws made thereunder;

(*c*) shall furnish the Corporation with plans of all drainage works carried out under clause (*b*);

(*d*) may carry out any necessary repairs to municipal drainage works;

(*e*) may, when the owner or occupier of any premises has failed to comply with a notice requiring such owner or occupier to provide for the effectual drainage of such premises and if so directed by an order from the Corporation, carry out such works as may be necessary for the effectual drainage of the said premises; and

(*f*) shall, when any works have been executed under clause (*e*), furnish the Corporation with plans of the same and with a statement of the cost of such works.

Prohibition of work by other than licensed plumber.

291. (*1*) No person other than a licensed plumber shall—

(*a*) execute any work in connection with the laying on of water from any mains of the Corporation to any land or building, or in connection with the extension of such mains or the supply of additional fittings after water has been so laid on, or

(*b*) make any underground drain communicating with the public sewers, or

(*c*) do any work in connection with such drain.

(Part V.—Chapter XX.—Streets and public places.—Sections 300—302.)

(3) If the owner or occupier of the building proves that any such structure or fixture was erected before the first day of June, 1863, or that it was erected on or after that day with the consent of any municipal authority duly empowered in that behalf, the Corporation shall, after such structure or fixture has been removed, make reasonable compensation to every person who suffers damage by the removal or alteration thereof.

Power to Corporation to cause wall to be removed or to remove other obstructions in public street.

300. (1) The Corporation may, after giving notice to him, require any person to remove any wall and may of their own motion remove any fence, rail, post, platform, or other obstruction, projection or encroachment (not being a portion of a building or fixture referred to in section 299) which has been erected or set up, and any materials or goods which have been deposited, in a public street or in or over any drain or aqueduct in a public street, whether the offender be prosecuted under this Act or not;

and the offender shall be liable for the payment of the expense of such removal.

(2) When under sub-section (1), the Corporation cause any wall to be removed or remove any other obstruction, projection or encroachment from land which forms part of a public street, no compensation shall be payable, but the Corporation shall be bound to provide proper means of access to and from the street if none exists already.

Execution of works in streets.

Provision of facilities, and payment of compensation, when work executed by Corporation in public street.

301. (1) When any work is being executed by the Corporation in any public street, they shall, so far as may reasonably be practicable, make adequate provision for—

(a) the passage or diversion of traffic;

(b) proper access to all premises approached from such street; and

(c) any drainage, water-supply, or means of lighting which are interrupted by reason of the execution of such work.

(2) The Corporation shall pay compensation to any person who sustains special damage by reason of the execution of any such work.

Building-lines and street alignments for public streets.

Power to Corporation to prescribe building-line and street alignment.

302. (1) If the Corporation consider it expedient to prescribe for any public street a building-line or a street alignment, or both a building-line and a street alignment, they shall give public notice of their intention to do so:

Provided that no building-line shall ordinarily be prescribed for any street laid out and made before the commencement of this Act.

(Part V.—Chapter XX.—Streets and public places.—Sections 306—309.)

Opening, improvement and closing of public streets, squares and gardens.

Power to Corporation to make, improve and close streets, squares and gardens.

306. The Corporation may—

(*a*) lay out and make new streets, squares and gardens;

(*b*) construct new bridges, causeways, culverts and sub-ways;

(*c*) turn, divert, or temporarily or permanently close any public street or part thereof, or permanently close any public square or garden; and

(*d*) widen, open, enlarge, or otherwise improve any public street, square or garden.

Power to Corporation to dispose of a permanently closed street, square or garden.

307. (*1*) When any public street, or part thereof, or any public square or garden is permanently closed under section 306, the Corporation may sell or lease the site of so much of the road-way and foot-path as is no longer required, or the site of the square or garden, as the case may be, making due compensation to, or providing means of access for, any person who may suffer damage by such closing.

(*2*) In determining such compensation under section 523, the court shall make allowance for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street, square or garden, at or about the same time that the public street, square or garden, on account of which the compensation is paid, is closed.

Projected public streets.

Projected public streets.

308. (*1*) The Corporation may from time to time prepare schemes and plans of projected public streets, showing the direction of such streets, the street alignment and building-line on each side of them, their intended width, and such other details as may appear desirable.

(*2*) The width of such projected streets, inclusive of space for foot-paths, shall not be less than forty feet or, in a *bustee*, twenty feet:

Provided that—

(*a*) the Corporation may, for special reasons, reduce the width of any projected street, but not so as to be less than thirty feet or in a *bustee* sixteen feet; and

(*b*) this sub-section shall not apply in any case in which the projected street, or any part thereof, runs along an existing street and the Corporation consider it impracticable to widen the street to the extent of forty feet or twenty feet, as the case may be.

Provisions of sections 302 and 303 to apply to projected public streets.

309. The provisions of sections 302 and 303 shall, with all necessary modifications, apply to public streets projected under section 308.

(Part V.—Chapter XX.—Streets and public places.—Sections 312—314.)

(10) At any time after an agreement has been executed in pursuance of clause *(i)* of sub-section *(6)* any person may pay off the balance outstanding of the charge created thereby, with interest due, if any, at a rate not exceeding seven *per cent. per annum*, up to the date of such payment.

Recovery of money payable in pursuance of section 311.

312. When an agreement has been executed by any person in pursuance of section 311, sub-section *(6)*, in respect of any land, and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Corporation (together with interest up to the date of realization, at a rate not exceeding seven *per cent. per annum*), under the provisions of this Act;

and, if not so recovered, the Corporation may, after giving public notice of their intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Agreement or payment under section 311 not to bar acquisition under a fresh declaration.

313. If any land in respect of which an agreement has been executed, or a payment has been accepted, in pursuance of section 311, sub-section *(6)*, be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894. I of 1894.

Special provisions as to private streets.

Making of new private streets.

314. *(1)* Any person intending to make or lay out a new private street shall send to the Corporation a written notice, with plans and sections showing the following particulars of the proposed street, namely:—

(a) the level, width and alignment thereof, and

(b) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining and lighting the street.

(2) The provisions of this Act as to the width of public streets and the height of buildings abutting thereon, and as to projected public streets, shall respectively apply in the case of streets referred to in sub-section *(1)*; and all the particulars referred to in that sub-section shall be subject to approval by the Corporation:

Provided that the Corporation may allow a private street to be made or laid out of a width less than forty feet but not less than twenty feet, and, if the street is less than two hundred feet in length, the maximum width of such street may ordinarily be taken to be thirty feet instead of forty feet.

(*Part V.*)

CHAPTER XXI.

BUILDINGS.

Use of building-sites, and erection of new buildings.

319. No piece of land shall be used as a site for the erection of a new building, and no new building shall be erected, otherwise than in accordance with—

(*a*) the provisions of this chapter and of Schedule XVII, and

(*b*) any orders, rules or by-laws made under this Act,

relating to the use of building-sites or the erection of new buildings, as the case may be.

Corporation to determine site of proposed masonry building.

320. If any question arises as to what, for the purposes of this Act, shall be deemed to be the site of any proposed masonry building, the Corporation shall determine the same, and their decision shall be final.

Licensed building surveyors.

Licensing of building surveyors.

321. (*1*) The Corporation may from time to time grant to any person they think fit a license to act as a licensed building surveyor for the purposes of this chapter.

(*2*) The Corporation may prescribe the qualifications to be required in persons to whom licenses may be granted under sub-section (*1*) in respect of the several classes of buildings.

(*3*) Every such license shall be for a renewable period of three years.

Rules for guidance of licensed building surveyors.

322. (*1*) The Corporation may make rules for the guidance of licensed building surveyors, and a copy of all such rules, for the time being in force, shall be written on the back of every license granted under section 321.

(*2*) The Corporation may from time to time prescribe a scale of fees of licensed building surveyors in respect of any class of buildings, to be made applicable in the absence of a written contract to the contrary.

Power to Corporation to decline plans, etc., made by persons other than licensed building surveyors.

323. The Corporation may decline to accept any plan, elevation or section, submitted with any application for permission to erect a new building, unless such plan, elevation or section has been prepared by, and bears the signature of, a licensed building surveyor.

Buildings generally.

Power to Corporation to regulate future erection of certain classes of buildings in particular streets or localities.

324. (*1*) The Corporation may at any time give public notice of their intention to declare that, in any street, portion of a street or locality specified in the notice,—

(*a*) the elevation and construction of the frontage of all new buildings (other than huts) thereafter erected shall, in respect of their architectural features, be such as the Corporation may consider suitable to the locality, or

(Part V.—Chapter XXI.—Buildings.—Sections 329—332.)

In case of dispute Corporation to decide what is to be deemed a substantial part of a building.

329. If any dispute arises as to what portion of a building shall be deemed to be a substantial part thereof for the purposes of this Act, it shall be referred to the Corporation, whose decision shall be final.

Application of Act to alterations of, and additions to, buildings.

Application of Act to alterations of, and additions to, buildings.

330. Subject to the provisions of section 331, the provisions of—

(*a*) this chapter,

(*b*) Schedule XVII, and

(*c*) any orders, rules and by-laws made under this Act,

relating to the erection of new buildings, shall subject to the rules in Part X of the said Schedule XVII, apply to every alteration of, or addition to, any building, and to any other work (except that of necessary repairs not involving any of the works specified in rule 92 of the said schedule) made or done for any purpose in, to, or upon any building.

Explanation.—No work of re-erection or re-construction which would constitute any building a new building under sub-clauses (*b*), (*c*) or (*d*) of clause (*46*) of section 3 shall, for the purposes of this section, be deemed to be an alteration of, or addition to, or any other work made or done to or upon, such building, but in the case of such re-erection or re-construction the provisions relating to the erection of new buildings as referred to in this section shall apply to the whole of the said new building.

Power to relax provisions of chapter and Schedule XVII.

331. In the case of an erection of any new building as defined in sub-clauses (*b*), (*c*) or (*d*) of clause (*46*) of section 3, and in the case of any addition or alteration or other work referred to in section 330, such relaxation of the provisions of this chapter and Schedule XVII may be made as the Corporation may think fit:

Provided that—

(*1*) no such relaxation shall apply to cases other than those specifically mentioned in rule 94 of Schedule XVII, and

(*2*) such relaxations are not likely prejudicially to affect the sanitation or ventilation of the building or other buildings in its vicinity.

Erection of, or addition to, boundary wall affecting an easement.

332. The Corporation shall not refuse sanction to the erection of a boundary wall exceeding ten feet in height or to any addition to any boundary wall so as to make it exceed ten feet in height on the ground that such boundary wall or such addition would cause interference with an existing easement in favour of, or prevent the acquisition of an easement by, the owner of adjacent premises.

(*Part V.—Chapter XXII.—Bustees.—Section 339.*)

to prepare and submit a plan of the *bustee*, to the scale of twenty-five feet to the inch, showing—

(*a*) the manner in which the *bustee* should be laid out, with the huts standing in regular lines and with a free passage, in front of and behind each line, of such width as may be necessary for proper ventilation and for scavenging,

(*b*) the drains for the general use of the tenants of the *bustee*,

(*c*) the means of lighting, common water-supply, bathing arrangements (if any) and common privy accommodation to be provided for the use of the tenants.

(*d*) the streets and passages which are to be maintained for the benefit of the tenants,

(*e*) the tanks, wells and low lands which are to be filled up and the tanks which are to be conserved, and

(*f*) any other proposed improvements:

Provided that when there are two or more owners of a *bustee* the Corporation may require them to prepare and submit a joint plan of the *bustee*.

(*2*) The streets referred to in clause (*d*) of sub-section (*1*) shall be not less than sixteen feet wide and ordinarily not more than two hundred feet apart, and the passages referred to in that clause shall be not less than twelve feet wide.

(*3*) If there is any masonry building within the limits of the *bustee*, the said plan shall be so prepared as clearly to distinguish such building and the land pertaining to it.

(*4*) The said plan—

(*i*) shall be considered by the Corporation and modified in such manner as may be required, and

(*ii*) shall, when approved by them, be deemed to be the standard plan of the *bustee*.

Preparation of standard plan by Corporation where owners disagree, etc.

339. (*1*) If, after the service of a notice under section 338 on the owners of any *bustee*, such owners—

(*a*) do not agree among themselves in the preparation of a plan as required by such notice, or

(*b*) for any reason prefer to have a plan prepared for them by the Corporation, or

(*c*) fail to comply within sixty days with such notice,

the Corporation shall cause the *bustee* to be inspected by two persons appointed in that behalf, one of whom shall be a medical officer of the Corporation or a person holding the diploma of Public Health or such other qualification as may be prescribed by the Corporation in this behalf, and the other an

(Part V.—Chapter XXII.—Bustees.—Sections 345—347.)

(*d*) the tanks, wells and low lands which should be filled up,

(*e*) any other improvements which the two persons appointed under sub-section (*1*) may consider necessary in order to remove or abate the unhealthy condition of the *bustee*, and

(*f*) any masonry building within the *bustee*, and any land pertaining to such building which it may be necessary to purchase or acquire for the purpose of making such streets or passages, or effecting any such improvement.

(*5*) A report (together with the schedules annexed thereto) made and signed under this section by any two persons appointed under sub-section (*1*) shall be sufficient evidence of the result of such inspection.

Approval by Corporation of standard plan and schedules annexed to such report.

345. (*1*) The Corporation shall consider every report (together with the plan and Schedules A and B annexed thereto) made under section 344, and, after hearing the objections (if any) of the owner of the *bustee* in respect of which the report has been made, and of any owner of any hut which is required to be demolished or altered and of the owner of any masonry building which is to be dealt with under sub-section (*4*) of section 344, may approve such plan and schedules after making such modifications (if any) therein as they may think fit.

(*2*) The plan so approved shall be deemed to be the standard plan of such *bustee*.

Power to Corporation to require owners or occupiers to carry out improvements specified in Schedule A.

346. When Schedule A, annexed to a report made under section 344, has been approved under section 345, the Corporation may cause a written notice to be served upon—

(*a*) the owners of the huts referred to in such Schedule A, or

(*b*) the owners of the *bustee* in which such huts are situated,

requiring them to carry out all or any of the improvements specified in that schedule or any portion of such improvements.

Payment of expenses incurred in carrying out improvements.

347. When any improvements required by a notice under section 346 are carried out by the Corporation under section 510, all expenses incurred thereby, including such reasonable compensation as the Corporation may think fit to pay to the owners or occupiers of huts removed,

shall be paid by the owner of the *bustee* to the Corporation and shall constitute a charge upon such *bustee* :

Provided that, notwithstanding anything contained in section 516, if it appears to the Corporation that any such owner is unable, by reason of poverty, to pay such expenses or any portion thereof, in the case of expenses relating to work which should, in

(Part V.—Chapter XXII.—Bustees.—Sections 353, 354.)

(*b*) one-third of such area as open lands not to be built upon, whether such open lands be common ground, streets, passages or spaces behind a line of huts.

(*2*) In calculating the said proportions of one-fourth and one-third of any such area, no tank situated therein that has not been filled up shall be taken into account.

Regulation of plots by standard plan, and compensation for adjustment of plots.

353. (*1*) When the land included in a *bustee* is owned by more owners than one, each owning one or more separate plots of such land, the standard plan approved under this chapter for such *bustee* shall, as far as practicable, provide—

(*a*) for one or more huts being completely contained in each such plot, and

(*b*) for such proportion of each such plot being taken for streets, passages and open land as is specified in section 352.

(*2*) If a greater proportion of any one such plot than the proportion specified in section 352 is so taken, such standard plan shall indicate—

(*i*) the compensation which shall be payable to the owner of such plot, and

(*ii*) the persons who are liable to pay such compensation by reason of their benefiting by such greater proportion having been taken.

(*3*) If no person can equitably be called upon to pay such compensation, the same shall be paid by the Corporation.

(*4*) Any compensation payable under this section to the owner of any land in a *bustee* shall not be paid until such land has been brought into complete conformity with the standard plan.

Streets and passages shown in standard plan, if not public streets, to remain private.

354. (*1*) Every street or passage in a *bustee* which is shown in the standard plan approved under this chapter for that *bustee* and which is not already a public street, shall, unless the Corporation and the owners of the land on which such street or passage is situated otherwise consent as provided in section 318, be deemed to be a private street; and the portion thereof which falls on the land of each owner shall belong to such owner:

Provided that any portion of any such street or passage which is situated on land purchased or acquired by the Corporation under section 349 shall remain the property of the Corporation.

(*2*) Every such private street shall, at all times, be kept open for scavenging purposes and for all other purposes of this Act in such manner as the Corporation may require, and shall also be kept open for the use of all the tenants of the *bustee*:

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, no use of any such street shall, by reason of any lapse of time, be held to confer a right of way on the public so as to bring the street within the definition of a "public street", in clause (*57*) of section 3. IX of 1908

(*Part V.—Chapter XXII.—Bustees.—Sections 360, 361.*)

(*b*) modify such plan, after hearing the objections (if any) of any owner of land included in such *bustee*.

(*7*) Where any land, formerly included in a *bustee*, ceases to be so included, and where any street or passage was shown on such land in the standard plan and where on such land ceasing to be so included the Corporation do not consider it to be practicable or do not consider it to be expedient to change the alignment of such street they shall, in applying the proviso to sub-section (*4*) to such street, compensate the owner of such land for any area that is included in such street which is in excess of one-seventh of the entire area of the land which ceases to be included in the *bustee*.

Bustee streets.

Power to Corporation to prescribe alignments for *bustee* streets.

360. (*1*) In any *bustee*, in respect of which a standard plan has not been prepared, or in any area in which it appears to the Corporation that huts are likely to be erected, the Corporation may, after hearing the objections, if any, of any owner of land in such *bustee*, prescribe alignments, not more than sixteen feet in width, for such private streets as they may think fit.

(*2*) When the land within such *bustee* or area is owned by more owners than one, each owning one or more separate plots of such land, such alignments shall, as far as practicable, be so prescribed as not to occupy, within any such plot, more than one-fifth of the area thereof and shall not ordinarily be less than two hundred and fifty feet apart.

(*3*) If, in any such plot, more than one-fifth of the area thereof is occupied by such alignments, the Corporation shall pay reasonable compensation to the owner of the plot:

Provided that no such compensation shall be paid in respect of any such plot as long as any hut or other structure other than a masonry building is left standing within any such alignment in the plot.

(*4*) No hut or portion of a hut shall be erected within any alignment prescribed under sub-section (*1*).

(*5*) The provisions of section 354 shall, with all necessary modifications, be deemed to apply to every street the alignment for which has been prescribed under this section.

Power to Corporation to require removal of existing huts within street or hut alignment in *bustee*.

361. (*1*) In any *bustee*, at any time after the expiration of seven years from the time when any alignment has been prescribed—

(*a*) for a street under section 360, or

(*b*) for huts under rule 66 of Schedule XVII,

the Corporation may, by written notice, require the owner of the land or the owners or occupiers of

(Part V.—Chapter XXIII.—Demolition, alteration and stopping of unlawful work.—Section 364.)

(*b*) may make any such order notwithstanding the fact that a valuation of such building has been made by the Executive Officer under Chapter X for the assessment of the consolidated rate:

Provided that where the Corporation have instituted proceedings under section 493, no application shall be made under this section.

(*2*) Notwithstanding anything contained in sub-section (*1*), no proceedings shall be instituted thereunder in respect of any work which has been done more than five years before the institution of such proceedings:

Provided that the onus of proving that the work was done more than five years previously shall lie on the owner.

Demolition or alteration of work in other cases.

364. (*1*) In any of the following cases, namely,—

(*1*) if, within the period prescribed in any notice issued under section 299, sub-section (*1*), requiring the removal or alteration of a verandah, platform or other similar structure or a fixture, the same be not duly removed or altered, or

(*2*) if the owner of any building erected or added to between a street alignment and the building-line fails to remove such building or addition when called upon by the Corporation to do so under section 303, sub-section (*3*), or

(*3*) if any person who makes any additions to a building in pursuance of an agreement executed under the proviso to sub-section (*1*) of section 303, fails to remove such additions when called upon by the Corporation to do so, or

(*4*) if the owner of any building erected or added to under the provisions of section 309 fails to remove such building or addition when called upon to do so, or

(*5*) if the owner of any building, which is unfit for human habitation, fails to demolish such building when required to do so under section 382, sub-section (*2*), or

(*6*) if any privy or urinal be placed in contravention of rule 21 or rule 22, sub-rule (*1*), of Schedule XV, or

(*7*) if, within the period prescribed in any notice issued under rule 2, sub-rule (*5*), of Schedule XVI, requiring the owner or occupier of a building to comply with any condition on which the erection of any verandah or other projection was permitted, such condition is not complied with, or

(*Part V.*)

CHAPTER XXIV.

LIGHTING AND SCAVENGING, AND REGULATION OF PUBLIC BATHING AND WASHING.

Lighting.

Provision for lighting of public streets, squares, gardens, markets and buildings.

366. (*1*) The Corporation shall—

(*a*) take measures for lighting, in a suitable manner, the public streets, squares and gardens and municipal markets and all buildings vested in the Corporation;

(*b*) procure, erect and maintain such number of lamps, lamp-posts and other appurtenances as may be necessary for such lighting; and

(*c*) cause such lamps to be lighted by means of oil, gas, electricity or such other light as the Corporation may from time to time determine.

(*2*) The Corporation may place and maintain—

(*i*) electric wires or gas-pipes for the purpose of lighting such lamps under, over, along or across any immovable property, and

(*ii*) posts, poles, standards, stays, struts, brackets, tunnels, culverts or any other suitable contrivance for carrying, suspending, or supporting such lamps, gas-pipes or electric wires in or upon any immovable property:

Provided that such pipes, wires, posts, poles, standards, stays, struts, brackets, tunnels, culverts or other contrivance shall be so placed as to occasion as little damage, detriment, inconvenience or nuisance to any person as the circumstances permit.

(*3*) Notwithstanding anything contained in the Indian Electricity Act, 1910, the Corporation shall not be liable except on the ground of negligence to any claim for compensation for any damage, detriment, inconvenience or nuisance caused by them, or by any one employed by them, in the exercise of any of the powers conferred by sub-section (*2*). IX of 1910.

Provision for lighting of private street by Corporation on application of owner.

367. The Corporation, on the application of the owners of a private street, may enter into arrangements for the lighting of such street on such terms as may be agreed upon between them and such owners, and shall thereafter in respect of such street have all the powers conferred by section 366.

Streets, etc., not to be constructed over municipal gas-pipe without permission.

368. (*1*) Without the written permission of the Corporation—

(*a*) no private street shall be constructed, and

(*b*) no building, wall or other structure shall be newly erected,

over any gas-pipe belonging to the Corporation.

(Part V.—Chapter XXIV.—Lighting and scavenging, and regulation of public bathing and washing. —Sections 374—377.)

Establishment for removal of sewage, etc., and the scavenging of streets.

374. The Corporation shall maintain an establishment for the removal of sewage from privies and urinals which are not connected with a sewer, and of offensive matter and rubbish from receptacles, depôts and places provided or appointed under section 371, or under any by-law made under this Act, and for the daily cleansing and scavenging of streets and premises.

Presumption as to offender

375. If in any case it is proved that rubbish, offensive matter or sewage has been deposited in any place in contravention of any by-law made under this Act, from some land or building, it shall be presumed, unless and until the contrary is proved, that the offence has been committed by the occupier of the said land or building.

Notice to be given by *mehters*, etc., before withdrawing from work

376. No *mehter* or other servant of the Corporation, who is employed to remove or otherwise deal with sewage, offensive matter or rubbish, shall, without the permission of the Corporation, withdraw from his duties without giving written notice, not less than one month previously, of his intention so to withdraw.

Public bathing and washing.

Construction of places for public bathing, etc

377. The Corporation may from time to time—

(*a*) construct suitable places for use by the public as swimming baths or for bathing, or for washing animals, or for washing or drying clothes, and

(*b*) prohibit, by public notice, the use by the public, for any of the said purposes, of any place not so constructed.

(*Part V.—Chapter XXVI.—Inspection and regulation of premises, and of factories, trades and places of public resort.—Sections 382, 383.*)

Power to Corporation to require demolition of, or execution of work on, building unfit for human habitation.

382. (*1*) When a Magistrate has prohibited the use of a building for human habitation under section 381 and such prohibition has been in force for three months, the Corporation shall take into consideration the question of the demolition of such building,

and shall give notice of the time (being some time not less than one month after the service of the notice) and place at which such question will be considered to the owner and to the occupier (if any) of the building,

and the said owner and occupier shall be entitled to be heard when the question is so taken into consideration.

(*2*) If, upon such consideration, the Corporation are of opinion that the building has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit,

they shall cause a written notice to be served on the said owner and occupier and also to be put on some conspicuous part of such building, requiring such owner and occupier to demolish the building or any portion thereof, as the case may be, or to execute such work as in the opinion of the Corporation may be necessary to render the building fit for human habitation.

(*3*) If such owner or occupier undertakes to execute with due diligence the work necessary to render the building fit for human habitation, and the Corporation consider that it can be so rendered fit for human habitation,

the Corporation may postpone the operation of the said notice for such time as they think sufficient for the purpose of giving the said owner or occupier an opportunity of executing the necessary work.

Power to Corporation to call for statement of accommodation.

383. (*1*) The owner of any building shall, within a period of a fortnight after receipt of a written notice from the Corporation requiring him to do so, submit to the Corporation a signed statement of the following particulars with respect to such building or any part thereof, namely,—

(*a*) the total number of rooms in the building,

(*b*) the length, breadth and height of each room, and

(*c*) the name of the person to whom he has let the building or each part of the building occupied as a separate tenement, with the particulars specified in clauses (*a*) and (*b*) in regard to each such part.

(*2*) The occupier of any building or of any part of any building occupied as a separate tenement shall, on like notice and within the like period, submit a

(Part V.—Chapter XXVI.—Inspection and regulation of premises, and of factories, trades and places of public resort.—Sections 388, 389.)

(*2*) No objections to any such declaration shall be received after a period of one month from the publication of such notice.

(*3*) The Corporation shall consider all objections received within the said period, giving any person affected by the said notice an opportunity of being heard by them during such consideration, and may thereupon make a declaration in accordance with the notice published under sub-section (*1*), with such modifications (if any) as they may think fit, but not so as to extend its application.

(*4*) Every such declaration shall be published in the *Calcutta Gazette*, and in such other manner as the Corporation may determine, and shall take effect from the date of such publication in the *Calcutta Gazette*.

(*5*) No person shall in any area specified in any such declaration use any premises for any of the said purposes.

Discontinuance of use of premises for particular purpose, when kept so as to be a nuisance.

388. Whenever a Magistrate imposes a fine on any person under section 488 for using or permitting the use of any premises for any purpose in contravention of section 386, sub-section (*1*), he may, if it is proved to his satisfaction that such premises are kept in such a state as to be a nuisance, also direct that they shall no longer be used for the said purpose.

Prohibition of fouling of water in carrying on trade or manufacture.

389. (*1*) No person engaged in any trade or manufacture specified in Schedule XIX shall—

(*a*) wilfully cause or suffer to flow or be brought into any tank, reservoir, cistern, well, duct or other place for the storage or accumulation of water belonging to the Corporation, or into any drain or pipe communicating therewith, any washing or other substance produced in the course of such trade or manufacture; or

(*b*) wilfully do any act connected with any such trade or manufacture whereby the water in any such tank, reservoir, cistern, well, duct or other place is fouled or corrupted.

(*2*) The Corporation may, after giving not less than twenty-four hours' previous notice in writing to the owner or to the person who has the management or control of any works, pipes or conduits connected with any such manufacture or trade, lay open and examine the said works, pipes or conduits.

(*3*) If, upon such examination, it appears that sub-section (*1*) has been contravened by reason of anything contained in or proceeding from the said works, pipes or conduits, the expenses of such laying open and examination, and of any measure which the Corporation, in their discretion, may require to be adopted for the discontinuance of the cause of such contravention, shall be paid by the owner of the said works, pipes or conduits, or by the person who has the

(Part V.—Chapter XXVII.—Markets, bazars and slaughter-places.—Section 396.)

(2) No person shall establish a new private market for the sale of, or for the purpose of exposing for sale, animals intended for human food, or any other article of human food, except with the sanction of the Corporation.

(3) When the establishment of a new private market has been so sanctioned, the Corporation shall cause a notice of such sanction to be affixed in the English, Bengali, Hindi and Urdu languages on some conspicuous spot on or near the building or place where such market is to be held.

Power to Corporation to license private markets, slaughter-houses and stock-yards.

396. (1) No person shall, without or otherwise than in conformity with the terms of a license granted by the Corporation in this behalf,—

(a) keep open any private market, or wilfully or negligently permit any place to be used as a private market;

(b) use any place in Calcutta as a slaughter-house or stock-yard, or for the slaughtering of any animal intended for human food; or

(c) use any place without Calcutta, whether as a slaughter-house or otherwise, for the slaughtering of any animal intended for human food to be consumed in Calcutta:

Provided as follows:—

(i) the Corporation shall not refuse, suspend or cancel any license for keeping open a private market for any cause other than the failure of the owner thereof to comply with some provision of this Act, or with some by-law made under section 478, at the time in force;

(ii) nothing in the foregoing provisions of this section shall be deemed to restrict the slaughter of any animal in any place on the occasion of any festival or ceremony;

(iii) nothing in the foregoing provisions of this section shall be deemed to prevent the Corporation from setting apart places for the sacrifice of animals in accordance with religious custom, and for the sale of the flesh thereof.

(2) Every such license shall be renewable triennially on the certificate of the Health Officer.

(3) There shall be paid for every license granted under sub-section (1) and in respect of every place set apart under proviso (iii) to that sub-section such annual fee as may be prescribed by the Corporation.

(Part V.—Chapter XXVII.—Markets, bazars and slaughter-places.—Sections 402—404.)

By-laws and table of charges to be posted up in markets and slaughter-houses.

402. (*1*) A printed copy of the by-laws made under section 478 and of the table of stallages, rents and fees, if any, in force in any market or slaughter-house under section 401, in the English, Bengali and Urdu languages, shall be affixed on some conspicuous spot in the market-building, market-place or slaughter-house.

(*2*) No person shall without lawful authority destroy, pull down, injure or deface any copy of any by-law or table so affixed.

Power to Corporation to expel person contravening by-laws.

403. (*1*) The Corporation, after giving the parties concerned an opportunity of being heard, may—

(*a*) expel from any municipal market, municipal slaughter-house or municipal stock-yard, for such period as they may think fit, any person who or whose servant has been convicted of contravening any by-law made under section 478, at the time in force in such market, slaughter-house or stock-yard,

(*b*) prevent such person, by himself or his servants, from further carrying on any trade or business in such market, slaughter-house or stock-yard, or occupying any stall, shop, standing, shed, pen or other place therein, and

(*c*) determine any lease or tenure which such person may have in any such stall, shop, standing, shed, pen or place.

(*2*) If the tenant, or the agent of the tenant, of the owner or lessee of any private market or slaughter-house has been convicted for contravening any by-law made under section 478 and specified by the Corporation in this behalf, the Corporation may require such tenant or agent to remove himself from such market or slaughter-house, within such time as may be mentioned in the requisition, and if he fails to comply with such requisition, he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such premises by the owner or lessee thereof or by the servants of such owner or lessee.

(*3*) If it appears to the Corporation that in any such case the owner or lessee is acting in collusion with a tenant or agent convicted as aforesaid who fails to comply with a requisition issued under sub-section (*2*), the Corporation may, if they think fit, cancel the license of such owner or lessee in respect of such premises.

Depôts or shops for trading in food-stuffs, etc., in cases of emergency.

404. Whenever an emergency arises which in the opinion of the Corporation makes it advisable to open depôts or shops for the purpose of trading in food-stuffs, fuel, cloth and other similar necessaries of life, they may, with the previous sanction of the Local Government and subject to such conditions and limitations as the Local Government may prescribe, open such depôts or shops for any such purpose.

(Part V.—Chapter XXVIII.—Food and drugs.—Section 407.)

(*iii*) in the case of *ghee*—

it shall contain only substances, other than curds, which are derived exclusively from the milk of cows or of buffaloes, and shall fulfil such conditions as may be prescribed by the Local Government;

(*iv*) in the case of wheat flour—

it shall not contain any substance which is not derived exclusively from wheat;

(*v*) in the case of mustard oil—

it shall be derived exclusively from mustard seed;

(*vi*) in the case of tea, it shall be the leaves and leaf buds of species of *Thea*, prepared by fermenting, drying and firing; it shall not contain any tea which has been in any measure deprived of its proper quality, strength or virtue by steeping, infusion, decoction or other means, or any foreign matter;

(*vii*) in the case of edible oil or fat, it must always conform to the standard prescribed for the same, provided that if a declaration be made that it is not for human consumption, it is denatured in such a way that it can be easily detected by sight or smell; and

(*viii*) in the case of any food or drug notified by the Local Government under clause (*h*)—

it shall fulfil such conditions as may be prescribed by the Local Government in regard to such food or drug in such notification.

(*2*) No person shall directly or indirectly, himself or by any other person on his behalf, sell, expose or hawk about for sale, or manufacture or store for sale, anything which is similar to any of the articles specified in clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) of sub-section (*1*), or to any article notified by the Local Government under clause (*h*) of that sub-section under a name which in any way resembles the name of such article.

(*3*) In any prosecution under this section it shall be no defence to allege that the vendor, manufacturer or storer was ignorant of the nature, substance or quality of the article sold, exposed or hawked about for sale, or manufactured or stored for sale, by him.

(*4*) In any prosecution under this section the Court shall, unless and until the contrary is proved, presume that any of the articles specified in clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) of sub-section (*1*), or any article notified by the Local Government under

(*Part V.—Chapter XXVIII.—Food and drugs.—
Sections 416—419.*)

(*2*) No owner, occupier or keeper of any shop or place licensed under section 413 shall employ in such shop or place any person contravening the provisions of sub-section (*1*):

Provided that this sub-section shall not apply to compounders or persons employed by practitioners of indigenous medicines.

(*3*) If any person contravenes the provisions of sub-section (*2*), the Magistrate by whom he is tried may cancel the license granted to him under section 413, sub-section (*1*).

Saving as to practitioners of indigenous medicines.

416. Nothing in section 414 or section 415 shall apply to the sale of drugs used by practitioners of indigenous medicines when such drugs are not sold in a shop or place where medicines are dispensed upon prescription.

Inspection, seizure and destruction of food and drugs

Power to Health Officer to inspect place where unlawful slaughter of animals or sale of flesh is suspected.

417. If the Health Officer, or any person authorized by him in this behalf, has reason to believe that any animal intended for human consumption is being slaughtered, or that the flesh of any such animal is being sold or exposed for sale, in any place or manner not duly authorized under this Act, he may, at any time by day or by night, without notice, inspect such place for the purpose of satisfying himself as to whether any provision of this Act or of any rule or by-law made under this Act, at the time in force, is being contravened thereat.

Corporation to provide for inspection of animals, etc., exposed for sale.

418. (*1*) The Corporation shall make provision for the constant and vigilant inspection of all animals, food and drugs intended for human consumption which are in course of transit or are exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or of preparation for sale,

and shall also make similar provision for the inspection, during the process of manufacture, of any such food or drug.

(*2*) If, as a result of such inspection as is provided for in sub-section (*1*), a prosecution is instituted under this chapter, then the burden of proving that any such animal, food or drug was not exposed or hawked about or deposited or brought for sale or for preparation for sale, or was not intended for human consumption, shall rest with the party charged.

Power to Health Officer to seize animals, etc., which are diseased, etc.

419. (*1*) The Health Officer, or any person authorized by him in this behalf, may, at any time by day or by night, inspect and examine any animal, food, or drug referred to in section 418 and any utensil or vessel used for preparing, manufacturing or containing any such food or drug.

(*2*) If any such animal appears to the Health Officer, or a person authorized as aforesaid, to be diseased, or if any such food or drug appears to him

(*Part V.—Chapter XXVIII.—Food and drugs.—Sections 425, 426.*)

of any food which is in course of transit in Calcutta or stored in any place in Calcutta for sale as an article for human consumption, and any person in possession of the same shall be bound to surrender such quantity;

and in every such case the price of the food so surrendered shall be payable by the Health Officer or by the person authorized by him, to the owner of the same, if claimed by such owner within one month from the date of the said surrender.

(*4*) When any sale under sub-section (*1*) or sub-section (*2*) is completed, or when any food is surrendered under sub-section (*3*), the Health Officer, or the person authorized by him in this behalf, or any purchaser who wishes to have an article of food analysed under section 423 shall forthwith notify to the seller, or his agent selling the article or the person in possession thereof, as the case may be, his intention to have the same analysed, and shall divide the article into three parts, to be then and there separated, and each part to be marked and sealed or fastened up in any manner which its nature will permit.

(*5*) The Health Officer, or the person authorized by him in this behalf, or the purchaser referred to in sub-section (*4*) shall deliver one of the said parts to the seller or his agent, shall retain another for future comparison, and may send the third to a public analyst.

Duty of public analyst to supply certificate of analysis.

425. (*1*) Every public analyst to whom any article of food has been submitted for analysis under this Act shall deliver to the person so submitting it a certificate in the form prescribed in Schedule XX to this Act, specifying the result of his analysis, and shall send a copy of the same to the Health Officer.

(*2*) Any document purporting to be such certificate signed by a public analyst shall be sufficient evidence in any inquiry, trial or proceeding under this Act of the result of such analysis:

Provided that any Court before which a case may be pending under this Act, whether exercising original, appellate, or revisional jurisdiction, may, of its own motion, or at the request either of the accused or the complainant, cause any article of food to be sent for analysis to the Director of Public Health, Bengal, or any other officer whom the Local Government may appoint in this behalf, who shall thereupon analyse the same and report the result of such analysis to the said Court, and the said report shall be admissible in evidence in such Court. The expense of such analysis shall be paid by the accused or the complainant, as the Court may, by order, direct.

Vesting of condemned food or drug in Corporation.

Food and drugs directed to be destroyed, etc.; to be property of Corporation.

426. When any authority directs, in exercise of any powers conferred by this chapter, the destruction of any food or any drug, or the disposal of the same so as to prevent its being used as food or medicine, the same shall thereupon be deemed to be the property of the Corporation.

(*Part V.—Chapter XXIX.—Milk-supply.—Sections 433, 434.*)

(*3*) The cost of the treatment, feeding and watering of the animal in the hospital may be realized from the owner of the animal according to such scale of rates as the Corporation may, from time to time, prescribe.

(*4*) If the owner refuses or neglects to pay such cost or to remove the animal within such time as the officer in charge of the hospital may prescribe, that officer may direct the animal to be sold and the proceeds of the sale to be applied to the payment of such cost.

(*5*) The surplus, if any, of the sale-proceeds shall be held in deposit by the Corporation, and shall, on application to be made by the owner within six months after the date of sale, be paid to him.

Licensees to notify infectious diseases existing among persons engaged in dairies.

433. Every person licensed under section 428, sub-section (*1*), shall notify to the Health Officer all cases of dangerous disease among persons engaged in, or in connection with the dairy, whether within or without Calcutta, from which he obtains his supply of milk for sale in Calcutta, as soon as he becomes aware or has reason to suspect that such dangerous disease exists.

Application of section 507 to an entry to inspect dairy.

434. The provisions of section 507 shall be applicable to an entry to inspect a dairy, whether within or without Calcutta, from which any milk is obtained for sale in Calcutta, for the purposes of this Act.

(Part V.—Chapter XXX.—Restraint of infection.—Sections 442—444.)

Provision of places for disinfection, washing or destruction of infected articles, and power to Health Officer to disinfect or destroy such articles.

442. (*1*) The Corporation may provide a place or places, with all necessary apparatus and establishment, for the disinfection of conveyances, clothing, bedding or other articles which have become infected; and when any articles have been brought to any such place for disinfection, may cause them to be disinfected either,—

(*a*) free of charge; or,

(*b*) in their discretion, on payment of such fees as they may from time to time fix in this behalf.

(*2*) The Corporation may from time to time, by public notice, appoint a place or places at which conveyances, clothing, bedding or other articles which have been exposed to infection from any dangerous disease may be washed; and no person shall wash any such article at any place not so appointed, without having previously disinfected the same.

(*3*) The Health Officer, or any person authorized by him in this behalf, may disinfect or destroy, or, by written notice, direct the disinfection or destruction of any clothing, bedding or other articles likely to retain infection.

(*4*) The Corporation shall pay such compensation as may appear to them reasonable for any article destroyed under sub-section (*3*), and their decision shall be final.

Infected articles not to be transmitted, etc., without previous disinfection.

443. (*1*) No person shall, without previous disinfection of the same, give, lend, sell, transmit, or otherwise dispose of any article which he knows or has reason to know has been exposed to infection from any dangerous disease.

(*2*) Nothing in sub-section (*1*) shall apply to a person who transmits, with proper precautions, any such article for the purpose of having the same disinfected.

Restrictions on carriage of patient or dead-body in public conveyance.

444. (*1*) No person who is suffering from a dangerous disease shall enter, or cause or permit himself to be carried in, a public conveyance, nor shall any other person knowingly cause or permit a person in his charge and suffering from a dangerous disease or the dead-body of any person who has died from such disease to be carried in a public conveyance without—

(*a*) previously notifying to the owner, driver, or person in charge of such conveyance that he is so suffering, and

(*b*) taking proper precautions against spreading such disease.

(*2*) Notwithstanding anything contained in any enactment relating to public conveyances for the time being in force, no owner or driver or person in charge of a public conveyance shall be bound to carry any person suffering as aforesaid or any

(Part V.—Chapter XXXI.—Registration of births and deaths and disposal of the dead.—Sections 452—455.)

required to give information under this Act concerning the birth of such child, and the registrar shall not enter in the register the name of any person as father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father of such child, and such person shall in such case sign the register together with the mother.

Information of death by whom to be given.

452. It shall be the duty of the nearest relatives present at the time of the death or in attendance during the last illness of any person dying in Calcutta, and in default of such relatives, of each person present or in attendance at the time of the death, and of the occupier of the premises in which, to his knowledge, the death took place, and in default of the persons hereinbefore in this section mentioned, of each inmate of such premises, and of the undertaker or other person causing the corpse of the deceased person to be disposed of, to give, to the best of his knowledge and belief, to the registrar of the district, or to the sub-registrar of the burial or burning ground or other place for the disposal of the dead where the body is buried or burnt or otherwise disposed of, information of the several particulars prescribed in Schedule XXII:

Provided that if any of the persons hereinbefore referred to gives the said information, no other person shall be bound to give it:

Provided also that if the death occurs in a hospital, none of the said persons shall be bound to give such information, but it shall be the duty of the medical officer in charge of the hospital, within twelve hours after the death, to send to the Health Officer a written notice containing the several particulars prescribed in Schedule XXII.

Medical practitioners to send to Health Officer notice stating cause of death.

453. Any medical practitioner in attendance during the last illness of any person dying in Calcutta shall, within three days of his becoming cognizant in the course of such attendance of the death of such person, send a written notice to the Health Officer, as nearly as may be in the form prescribed in Schedule XXII, stating, to the best of his judgment, the cause of death.

Duties of police with regard to unclaimed corpses.

454. It shall be the duty of the police to convey every unclaimed corpse to a burial or burning ground or other place for the disposal of the dead, or to a duly appointed mortuary, and thereafter to inform the registrar of the district in which such corpse was found.

Sextons, etc., not to bury, etc., corpse without certificate.

455. A sexton or keeper of a burial or burning ground or other place for the disposal of the dead, whether situated in Calcutta or not, shall not bury, burn or otherwise dispose of, or allow to be buried or burnt or otherwise disposed of, the corpse of any person who has died in Calcutta unless such corpse is accompanied by a certificate, in the form prescribed by Schedule XXII, signed by a registrar or sub-registrar appointed under section 448 or by a registered medical practitioner or any other medical practitioner authorised in this behalf by the Local Government:

(Part V.—Chapter XXXI.—Registration of births and deaths and disposal of the dead.—Section 462.)

Prohibition of certain acts without the permission of the Executive Officer.

462. (*1*) No person shall, without the written permission of the Executive Officer—

(*a*) make any vault, grave or interment within any wall, or underneath any passage, porch, portico, plinth or verandah, of any place of worship; or

(*b*) make any interment or otherwise dispose of any corpse in any place which is closed for the disposal of the dead under section 460; or

(*c*) build, dig or cause to be built or dug any grave or vault, or in any way dispose of, or suffer or permit to be disposed of, any corpse, at any place which is not registered in the register kept under section 457, sub-section (*1*); or

(*d*) exhume any body from any place for the disposal of the dead, except under the provisions of section 176 of the Code of Criminal Procedure, 1898, or of any other relevant enactment for the time being in force. V of 1898.

(*2*) Such permission may be granted by the Executive Officer in special cases only and subject to such general or special orders as the Local Government may make in this behalf.

(*3*) An offence against clauses (*b*), (*c*) or (*d*) of sub-section (*1*) shall be deemed to be a cognizable offence within the meaning of sections 149, 150 and 151 of the said Code of Criminal Procedure, 1898.

PART VI.

CHAPTER XXXIII.

ACQUISITION, DISPOSAL AND GENERAL IMPROVEMENT OF LAND AND BUILDINGS.

Acquisition and disposal of land and buildings.

Power to Corporation to acquire land and buildings for improvements.

468. The Corporation may acquire any land and buildings, whether situated in Calcutta or not,—

(*i*) for the purpose of opening out any congested or unhealthy area or of otherwise improving any portion of Calcutta; or

(*ii*) for the purpose of erecting sanitary dwellings for the working and poorer classes.

Scheme for carrying out such improvements.

469. (*1*) When any land or building has been acquired under section 468 for the purpose of carrying out any work, the Corporation shall frame a scheme for carrying out such work either by themselves or by any co-operative building society or by any other person whom they may select to carry out the same.

(*2*) When any scheme is framed under sub-section (*1*) for the carrying out of work by any person other than the Corporation, the scheme shall embody the terms and conditions agreed upon between the Corporation and such person;

and such conditions shall be deemed to include a power to the Corporation to superintend and control the execution of the work.

(*3*) Every scheme framed under sub-section (*1*) shall be published in the *Calcutta Gazette* and in such other manner as the Corporation may think fit, together with a notice specifying a period within which objections will be received.

(*4*) The Corporation shall consider all objections received within the said period, and shall submit the documents to the Local Government with such recommendations as they may desire to make.

(*5*) The Local Government, after considering the said objections and recommendations (if any), may confirm the scheme, and before doing so may modify it, but not so as to extend its effect.

Power to Corporation to carry out improvements.

470. When any scheme for the carrying out of work by the Corporation themselves has been confirmed by the Local Government under section 469, sub-section (*5*), the Corporation may proceed to carry out the work in accordance with the scheme.

Transfer of land and buildings to person for carrying out improvements.

471. (*1*) When any scheme for the carrying out of work by any person other than the Corporation has been confirmed by the Local Government under section 469, sub-section (*5*), the Corporation may sell, lease or otherwise transfer to such person the land and buildings which have been acquired under section 468, for the purpose and under the condition that he will carry out such work in accordance with the said scheme.

(Part VI.—Chapter XXXIII.—Acquisition, disposal and general improvement of land and bulidings.—Section 476.)

(*iii*) if the market-value is specially high in consequence of the property being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land or building if put to ordinary uses ;

(*iv*) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within one year before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the improvement was made *bonâ-fide* and not in contemplation of proceedings for the acquisition of the land or building being taken under the said Land Acquisition Act. I of 1894.

Vesting in Corporation of land and buildings acquired under the Land Acquisition Act, 1894.

476. On payment by the Corporation of the compensation awarded under the said Land Acquisition Act, 1894, in respect of any land or buildings and of any other charges incurred in acquiring the said land or buildings, the same shall vest in the Corporation.

PART VII.

CHAPTER XXXV.

BY-LAWS AND RULES.

Power to Corporation to make by-laws.

478. The Corporation may make by-laws generally for carrying out the provisions and intentions of this Act; and in particular, and without prejudice to the generality of the foregoing power, they may make by-laws—

(*1*) for the subdivision, amalgamation, renewal and exchange of municipal debentures issued under Chapter VIII;

(*2*) regulating—

(*a*) the detention and examination of petroleum introduced into Calcutta for consumption therein;

(*b*) the collection of any tax imposed under section 181, sub-section (*3*); and

(*c*) such other matters connected with the introduction of petroleum into Calcutta for consumption therein as the Corporation may from time to time think fit to regulate:

Provided that no such by-law shall render petroleum, passing through Calcutta in transit for any place beyond Calcutta, liable to taxation or to any detention or examination whatsoever under this Act;

(*3*) prescribing the size, the make, the length of the nave, and the minimum width of tyres of carts, the maximum load which they shall be permitted to carry, and generally prescribing the conditions under which persons shall be permitted to own and drive registered carts;

(*4*) prescribing the procedure to be followed by owners or occupiers desiring a water-supply;

(*5*) prescribing a schedule of charges for water supplied for other than domestic purposes;

(*6*) regulating the testing of the purity of filtered water supplied under Chapter XVII;

(*7*) providing for the maintenance of a map of the water-supply system and facilitating the inspection of the same by ratepayers;

(*8*) regulating—

(*i*) the construction and maintenance of water-pipes, taps and fittings, and

(*ii*) all matters and things connected with the supply and use of water, the use, protection and control of meters, hydrants and other fittings, and generally the control of the water-supply and the administration of Chapter XVII;

(*Part VII.—Chapter XXXV.—By-laws and rules.—Section 478.*)

and cattle-sheds in the occupation of persons following the trade of dairyman or milk-seller; and

(*b*) for declaring areas in which no person shall keep milch-cattle for the purpose of supplying milk for sale, subject to power being given to the Corporation to give such compensation as they think fit in respect of any cattle-shed constructed in accordance with the plan sanctioned by the Corporation within two years of the publication of a by-law under this sub-clause, provided that such structure is removed within the time fixed by the by-law;

(*36*) for enforcing the cleanliness of milk-stores and milk-shops and milk-vessels used for containing milk;

(*37*) requiring notice to be given whenever any milch-animal is affected with any contagious disease, and prescribing precautions to be taken for protecting milch-cattle and milk against infection or contamination;

(*38*) for the regulation of lodging-houses;

(*39*) regulating the removal and disposal of rank or noxious vegetation;

(*40*) for the inspection, supervision, regulation, and control of eating-houses and places where food for human consumption is prepared or kept for sale;

(*41*) for determining what amount of superficial and cubic space shall be deemed, for the purposes of sub-section (*1*) of section 384, to be necessary for each occupant of a building or room;

(*42*) for the regulation, inspection by day or by night, supervision and control of all factories, bakehouses, work-shops, work-places and premises used for any of the purposes referred to or mentioned in sections 385 and 386, and of all trades and manufactures carried on therein, and for the cleanliness or ventilation of the same, or the health or safety of the persons employed therein;

(*43*) regulating the inspection, supervision and control of theatres, circuses and other places of public resort, recreation or amusement, and prescribing the terms and conditions subject to which licenses may be granted for keeping open such places;

(Part VII.—Chapter XXXV.—By-laws and rules.—
Sections 479—481.)

(*68*) generally, for regulating the disposal of the dead, the inspection of all places for the disposal of the dead, and the maintenance of all such places in good order and in a safe and sanitary condition;

(*69*) regulating and facilitating the taking of a census of the population of Calcutta, and securing accurate returns thereof, and prescribing the duties of the Superintendent referred to in section 464;

(*70*) for securing the registration of marriages for statistical purposes; and

(*71*) regulating the printing and sale of by-laws and rules made under this Act, and providing for the exhibition thereof in suitable places.

Provisions as to the application of certain by-laws.

479. (*1*) There shall be annexed to by-laws made under clauses (*9*), (*11*) or (*34*) of section 478, type-plans of all constructions referred to in them and the said plans shall be open to the inspection of any applicant at the municipal office, at all reasonable times.

(*2*) No by-law made under clause (*42*) of section 478 shall—

(*a*) affect the Bengal Steam-boilers and Prime-movers Act, 1879, or — Ben. Act III of 1879.

(*b*) apply to any factory to which the Indian Factories Act, 1911, is applicable. — XII of 1911.

Penalties for breach of by-laws.

480. In making a by-law under section 478, the Corporation may provide that a breach of it shall be punishable—

(*a*) with fine which may extend to fifty rupees and in the case of a continuing breach, with fine which may extend to ten rupees for every day during which the breach continues after conviction for the first breach, or

(*b*) with fine which may extend to ten rupees for every day during which the breach continues after receipt of written notice from the Corporation to discontinue the breach.

Conditions precedent to the making of by-laws.

481. The power to make by-laws under this Act is subject to the condition of the by-laws being made after previous publication, and to the following further conditions, namely,—

(*a*) a draft of the by-laws shall be published in the *Calcutta Gazette* and in local newspapers;

(*b*) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication or such longer period as the Corporation may appoint;

PART VIII.

CHAPTER XXXVI.

PENALTIES.

Certain offences punishable with fine.

488. (*1*) Whoever commits any offence by—

(*a*) contravening any provision of any of the sections, sub-sections, clauses of sections, provisos or rules of this Act mentioned in the first column of the following table, or

(*b*) contravening any provision of any rule made under any of the said sections, sub-sections, clauses, or provisos, or

(*c*) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses, provisos or rules,

shall be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

(*2*) Whoever, after having been convicted of any offence referred to in clauses (*a*), (*b*) or (*c*) of sub-section (*1*), continues to commit such offence shall be punished, for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in this behalf in the fourth column of the said table.

Explanation.—The entries in the second column of the following table, headed "Subject", are not intended as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions but are inserted merely as references to the subject thereof :—

1	2	3	4
Sections, sub-sections, clauses, provisos or rules.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
Section 121, sub-section (*2*).	Requisition by auditors to produce documents, to appear in person, or to make and sign declaration, to answer question or to submit statement.	One hundred rupees	Fifty rupees.
Section 136, sub-sections (*1*) and (*2*).	Requisition for returns of measurements and rent or annual value of land or building.	Two hundred rupees.	
Section 145 ...	Obligation to give notice of transfer of title in land or building.	Twenty-five rupees	Five rupees.
Section 155 ...	Obligation to give notice of re-occupation of unoccupied land or building.	Twenty-five rupees	Five rupees.
Section 167, sub sections (*1*) and (*2*).	Obligation to forward statement of carriages and animals liable to taxation.	Twenty rupees.	

(Part VIII.—Chapter XXXVI.—Penalties.—Section 488.)

1	2	3	4
Sections, sub-sections, clauses, provisos or rules.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
Section 279, sub-section (1).	Position of cesspools	Fifty rupees.	
Section 279, sub-section (2).	Requisition to remove or fill up cesspools.	Fifty rupees ...	Twenty rupees.
Section 280, sub-section (1).	Construction of house-drain, service privy, etc., within fifty feet of tank, well, etc.	Twenty rupees.	
Section 280, sub-section (2).	Requisition on owner of land to remove receptacle for sewage or offensive matter.	Twenty rupees ...	Five rupees.
Section 284, clause (b).	Requisition on owner of premises to alter, pave, repair, etc., house-drain, cesspool, privy or urinal.	One hundred rupees	Twenty rupees.
Section 285 ...	Requisition on occupier of premises to carry out work which owner may be required to carry out.	The amount which may be levied as fine on the owner in each case.	The amount which may be levied as daily fine on the owner in each case.
Section 287 ...	Prohibition of certain acts in connection with drainage, etc.	One hundred rupees	Twenty rupees.
Section 291, sub-section (1).	Prohibition of execution of certain work by persons other than licensed plumbers.	One hundred and fifty rupees.	
Section 291, sub-section (2).	Prohibition of owner or occupier of premises causing or allowing certain work to be executed by persons other than licensed plumbers.	Fifty rupees.	
Section 292, sub-section (2).	Prohibition of licensed plumber demanding or receiving more than prescribed charge.	One hundred rupees.	
Section 294, sub-section (1).	Prohibition of licensed plumber infringing rules, executing work carelessly or negligently, or using bad materials, appliances or fittings.	Fifty rupees.	
Section 299, sub-section (1).	Requisition on owner or occupier of building to remove or alter verandah, etc., or fixture.	One hundred rupees	Ten rupees.
Section 300, sub-section (1).	Requisition on person to remove wall ...	Fifty rupees ...	Ten rupees.
Section 303, sub-section (1).	(i) Prohibition of erection of, or addition to, building or wall within street alignment prescribed under section 302.	Two hundred and fifty rupees.	Twenty-five rupees.
	(ii) Requisition to remove building erected or added within street alignment prescribed under section 302.	Fifty rupees ...	Ten rupees.

(Part VIII.—Chapter XXXVI.—Penalties.—Section 488.)

1	2	3	4
Sections, sub-sections, clauses, provisos or rules.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
Section 371, sub-section (*2*).	Provision of land in *bustee* when required for temporary deposit of rubbish, etc.	Ten rupees ...	Three rupees.
Section 372, sub-section (*1*).	Direction to collect rubbish and offensive matter and deposit it at or near entrance to premises.	Ten rupees.	
Section 372, sub-section (*2*).	Direction to collect rubbish and offensive matter and deposit it in public receptacle.	Ten rupees.	
Section 372, sub-section (*3*).	Direction to collect rubbish and offensive matter and deposit it in lump in street or premises.	Ten rupees.	
Section 373 ...	Direction to collect and remove rubbish and offensive matter accumulating on business premises or on premises in which building work is going on.	Ten rupees.	
Section 377, clause (*b*).	Prohibition of use by the public for bathing, etc., of any place not constructed therefor.	Ten rupees.	
Section 381, sub-section (*3*).	Using building declared unfit for human habitation.	Two hundred and fifty rupees.	Fifty rupees.
Section 382, sub-section (*2*).	Requisition on owner and occupier to demolish, or execute work on, building declared unfit for human habitation.	Two hundred and fifty rupees.	Fifty rupees.
Section 383 ...	Requisition on owner or occupier to furnish statement of occupants, accommodation, etc., of building.	Twenty-five rupees	Five rupees.
Section 384, sub-section (*1*).	Requisition on owner or occupier to abate overcrowding in building or room.	Twenty-five rupees	Five rupees.
Section 385, sub-section (*1*).	Establishing, or materially altering, enlarging or extending, factory, etc., without permission.	One thousand rupees	Two hundred rupees.
Section 386, sub-section (*1*).	Using premises for certain trades, etc., without license or contrary to terms of license.	Two hundred and fifty rupees.	Fifty rupees.
Section 387 sub-section (*5*).	Using premises in declared area for any purpose referred to or mentioned in section 386.	Fifty rupees ..	Five rupees.
Section 388 ...	Failure to comply with direction of Magistrate in regard to use of premises proved to be a nuisance.	Five hundred rupees	One hundred rupees.
Section 389, sub-section (*1*).	Fouling water in carrying on trade or manufacture.	One thousand rupees	Two hundred rupees.
Section 390, sub-section (*1*).	Using eating-house, etc., without license or contrary to terms of license.	Fifty rupees ...	Five rupees.
Section 391 ...	Keeping open theatre, circus or other place of public amusement without license or contrary to terms of license.	Five hundred rupees	One hundred rupees.

(Part VIII.—Chapter XXXVI.—Penalties.—Section 488.)

1	2	3	4
Sections, sub-sections, clauses, provisos or rules.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
Section 444, sub-section (*1*).	Infected person entering or causing or permitting himself to be carried in, or carrying of dead-body in, public conveyance.	Fifty rupees.	
Section 444, sub-section (*3*).	Carrying infected person or dead-body in public conveyance.	Two hundred rupees.	
Section 445, sub-section (*1*).	Taking public conveyance to appointed place for disinfection.	Two hundred rupees.	
Section 445, sub-section (*2*).	Intimation of number, and disinfection of infected conveyance.	Two hundred rupees.	
Section 445, sub-section (*3*).	Using infected public conveyance ...	Five hundred rupees.	
Section 446, sub-section (*2*).	Carrying infected persons or dead bodies in other than special conveyances without sanction of Health Officer	Two hundred rupees.	
Section 451 ...	Information of birth	Ten rupees.	
Section 452 ...	Information of death	Ten rupees.	
Section 453 ...	Notice by medical practitioner to Health Officer stating cause of death.	Fifty rupees.	
Section 455 ...	Burying, burning or otherwise disposing of corpse without certificate.	One hundred rupees.	
Section 457, sub-section (*1*).	Registration of place for disposal of the dead, and depositing of plan in municipal office.	One hundred rupees.	
Section 459 ...	Opening or using place for disposal of the dead without permission.	Five hundred rupees.	
Section 460, sub-section (*2*).	Prohibition of use of place of public worship, etc., for disposal of the dead.	Five hundred rupees.	
Section 462, sub-section (*1*).	Making vault, grave or interment, or disposing of corpse, or exhuming corpse, in certain cases, without permission.	Five hundred rupees.	
Section 466, sub-section (*2*).	Census enumerators to obey written instructions of Superintendent.	Fifty rupees.	
Section 467, sub-section (*1*).	Certain persons to act as census enumerators.	Fifty rupees.	
Section 498, sub-section (*5*).	Production of license or written permission.	Fifty rupees ...	Ten rupees.
Section 509 ...	Obstructing Executive Officer or other person in entering into or upon premises.	Two hundred rupees for a first offence and five hundred rupees for any subsequent offence.	
Section 527, sub-section (*3*).	Occupier to afford facilities to owner for complying with Act, rules, by-laws and requisitions.	One hundred rupees	Twenty rupees.
Section 549, sub-section (*1*), clause (*a*).	Direction to owner of building to demolish the same.	Five hundred rupees in the case of a masonry building, and fifty rupees in the case of a hut.	One hundred rupees in the case of a masonry building, and ten rupees in the case of a hut

(Part VIII.—Chapter XXXVI.—Penalties.—Section 488.)

1	2	3	4
Sections, sub-sections, clauses, provisos or rules.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
Schedule XVII, rule 64, sub-rule (*1*).	Erection of masonry building without fresh permission after lapse of original permission.	One hundred rupees.	
Schedule XVII, rule 88, sub-rule (*1*).	Erection of hut without written permission.	Fifty rupees.	
Schedule XVII, rule 89.	Erection of hut without fresh permission after lapse of original permission.	Twenty-five rupees	
Schedule XVIII, rule 2.	Requisition on owner or occupier to lime-wash or otherwise cleanse building.	Twenty-five rupees	Five rupees.
Schedule XVIII, rule 3.	Requisition on owner or person concerned to secure, enclose, cleanse or clear land or building which is untenanted, filthy or a nuisance.	Twenty-five rupees	Five rupees.
Schedule XVIII, rule 4, sub-rule (*1*).	Requisition on owner or occupier to take down, repair or secure wall, building or fixture in a ruinous state, etc.	Two hundred and fifty rupees.	One hundred rupees.
Schedule XVIII, rule 4, sub-rule (*2*).	Requisition on inmate to vacate building in ruinous state, etc.	One hundred rupees	Fifty rupees.
Schedule XVIII, rule 6, sub-rule (*1*).	Requisition on owners or occupiers to execute works or take measures with respect to buildings or block of buildings in order to prevent risk of disease.	Five hundred rupees in the case of a masonry building or block of masonry buildings, and one hundred rupees in the case of a hut or block of huts.	One hundred rupees in the case of a masonry building or block of masonry buildings, and twenty rupees in the case of a hut or block of huts.
Schedule XVIII, rule 7, sub-rule (*1*).	Requisition to cleanse, fill up or de-water well, pool, ditch, tank, pond or marshy ground, or to drain off or remove waste or stagnant water.	Two hundred rupees	Fifty rupees.
Schedule XVIII, rule 9, sub-rule (*3*).	Making excavation or digging cesspool, tank, pond, well or pit after prohibition.	One hundred rupees.	
Schedule XVIII, rule 9, sub-rule (*4*).	Requisition on owner or occupier of land to fill up excavation, cesspool, tank, pond, well or pit unlawfully made.	Fifty rupees ...	Five rupees.

(*Part VIII.—Chapter XXXVI.—Penalties.—Sections 494—497.*)

during which the offence is continued after the first day:

Provided that where an application has been made under section 363 or section 364, no proceedings shall be instituted by the Corporation under this section.

Fine for putting building to other than declared use.

494. When a new building has been erected, or when any building has been altered or added to after a statement has been made, under rule 53 or rule 81 of Schedule XVII, that it was intended to use the building or any substantial part thereof for any of the purposes specified in Schedule XIX, or as a stable, cattle-shed or cow-house, then any person putting the building or such part thereof to any use other than that so stated shall be liable,—

(*a*) in the case of a masonry building, to fine which may extend to two hundred and fifty rupees, and to further fine which may extend to fifty rupees for every day after the first during which he continues such use, and,

(*b*) in the case of a hut, to fine which may extend to twenty-five rupees, and to further fine which may extend to five rupees for every day after the first during which he continues such use.

Fine for using building for carrying on offensive trade without previous declaration

495. When a new building has been erected, or when any building has been altered or added to under this Act without any statement having been made under rule 53 or rule 81 of Schedule XVII, that it was intended to use the building or any substantial part thereof for any of the purposes specified in Schedule XIX, or as a stable, cattle-shed or cow-house, then any person using the building or such part thereof for any of those purposes shall be liable,—

(*a*) in the case of a masonry building, to fine which may extend to two hundred and fifty rupees, and to further fine which may extend to fifty rupees for every day after the first during which he continues such use, and,

(*b*) in case of a hut, to fine which may extend to twenty-five rupees, and to further fine which may extend to five rupees for every day after the first during which he continues such use.

Penalty on *mehters*, etc., withdrawing from work without notice

496. Any *mehter* or other servant of the Corporation referred to in section 376 who withdraws from his duties in contravention of that section shall be punished with fine which may extend to fifty rupees, or with simple imprisonment for a term which may extend to three months, or with both, and shall be liable to forfeit any salary which may be due to him.

Penalty for obstructing contractor or removing mark.

497. Any person who, in contravention of section 555, obstructs or molests any person with whom the Corporation have entered into a contract, or, in contravention of section 556, removes any mark, shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months.

(*Part IX.—Chapter XXXVII.—Procedure.— Sections 505—507.*)

(*b*) if the owner or occupier is not found, by giving or tendering such document or by sending it by registered post to any adult male member of the family, or to a servant in the employ, of the owner or occupier or of any one of the owners or occupiers; or,

(*c*) if none of the means mentioned in clause (*a*) or clause (*b*) be available, by causing a notice on yellow paper, in the form prescribed in Schedule XXIII, or in a form to the like effect, setting forth the substance of such document, to be affixed on some conspicuous part of the land or building to which the document relates.

Service how to be effected otherwise than on owner or occupier of premises.

505. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to any person otherwise than as owner or occupier of any land or building, such service or issue shall be effected—

(*a*) by giving or tendering such document to such person; or,

(*b*) if such person is not found, by leaving such document at his last known place of abode or business in Calcutta, or by giving or tendering the same or by sending it by registered post to any adult male member of his family or servant in his employ; or,

(*c*) if such person does not reside in Calcutta and his address elsewhere is known to the Executive Officer, by forwarding such document to him by registered post under cover bearing the said address; or,

(*d*) if none of the means referred to in clauses (*a*), (*b*) or (*c*) be available, by causing a notice on yellow paper in a form prescribed in Schedule XXIII, or in a form to the like effect, setting forth the substance of such document, to be affixed on some conspicuous part of the land or building (if any) to which the document relates.

Sections 503 to 505 not to apply to Magistrate's summons.

506. Nothing in sections 503, 504 and 505 shall apply to any summons issued under this Act by a Magistrate.

Powers of entry.

Power to Executive Officer to enter premises to inspect, survey, etc., and to use force in certain cases

507. (*1*) The Executive Officer may enter into or upon any premises, with or without assistants or workmen, in order to make any inspection, survey, measurement, valuation or inquiry, or execute any work which is authorized by this Act or by any rule or by-law made thereunder, or which, in his opinion, it is necessary for any of the purposes or in pursuance of any of the provisions of this Act or of any such rule or by-law, to make or execute:

Provided as follows:—

(*a*) except when it is in this Act or in any rule or by-law made thereunder otherwise expressly provided, no such entry shall be made between sunset and sunrise;

(Part IX.—Chapter XXXVII.—Procedure.—Sections 512—514.)

(3) If the objector has stated in his written objection that he wishes to be heard in person, he shall be entitled to be so heard, and the objection shall be considered in his presence, at a time to be fixed by notice issued in this behalf by the Corporation or the municipal officer by whom the notice was issued.

Right of person served with notice to require estimate of expenses of work.

512. (1) Any person on whom a written notice referred to in section 511, sub-section (1), has been served may,—

(a) instead of delivering an objection under section 511, or

(b) at the time of delivering such an objection,

apply, within the period prescribed in clause (b) of sub-section (1) of section 510, to the Corporation or the municipal officer by whom the notice was issued for an estimate of the expenses which would be incurred if the notice were enforced under section 510, sub-section (2); and, on receipt of such an application, the Corporation or the said officer shall supply such estimate.

(2) If the Corporation or the said officer fail to supply such estimate, not more than five rupees shall be charged to the said person for any work executed by the Executive Officer by way of enforcing the said notice under section 510.

Reference of objections to Corporation.

513. (1) If any estimate supplied under section 512 in respect of any work referred to in any written notice exceeds three hundred rupees, no work shall be executed by the Executive Officer by way of enforcing the said notice until the expiration of a fortnight from the date on which the estimate was so supplied.

(2) Within a period of seven days from the said date, the person on whom the notice was served may apply in writing to have his objections to the execution of the work or to the estimated cost of the work determined by the Corporation;

and, if such application be made within the said period, no work shall be executed under section 510, by way of enforcing the said notice, until the Corporation have disposed of such objections.

Recovery of expenses.

Power to Corporation to accept agreement for payment of expenses in instalments.

514. Whenever under this Act or under any rule or by-law made thereunder the expenses of any work executed or of any measure taken or thing done by, or under the order of, the Corporation, any Magistrate or any municipal officer empowered under section 12 in this behalf, are payable by any person, the Corporation may, if they think fit, instead of recovering any such expenses in any other manner provided in this Act or in any rule or by-law made thereunder, take an agreement from the said person to pay the same in instalments of such amounts and at such intervals as will secure the payment of the whole amount due, with interest thereon at the rate of not less than six *per centum per annum*, within a period of not more than six years.

(Part IX.—Chapter XXXVII.—Procedure.—Sections 523—527.)

case for the determination of the Court of Small Causes having local jurisdiction, or if the amount involved exceeds two thousand rupees, to the High Court.

(2) The Corporation shall, pending the decision on any such reference, defer further proceedings for the recovery of the sum claimed by them, and shall, after the decision, proceed to recover only such amount (if any) as is thereby declared to be due.

Application to Small Cause Court in other cases.

523. (1) Where, in any case not provided for by section 522, the Corporation are, or any municipal officer or servant or any other person is, required by this Act or by any rule or by-law made thereunder to pay any expenses or any compensation, the amount to be so paid and, if necessary, the apportionment of the same, shall, in case of dispute, be determined by the Court of Small Causes having local jurisdiction, or by the High Court, as the case may be, on application being made to it for this purpose at any time within one year from the date when such expenses or compensation first became claimable.

(2) This section shall not apply to any case which is otherwise provided for in section 421, sub-section (3), section 521, sub-section (2), or section 535, sub-section (2), or in the Land Acquisition Act, 1894, as amended by section 475 of this Act. I of 1894

Recovery of sums ascertained under section 523 to be due.

524. If the amount of any expenses or compensation determined in accordance with section 523 is not paid on demand by the person liable to pay the same, it shall be recoverable as if the same were due under a decree of the Court of Small Causes.

Power to sue for expenses or compensation.

525. Instead of proceeding in any manner hereinbefore prescribed for the recovery of any expenses or compensation of which the amount due has been ascertained as hereinbefore provided, or after such proceedings have been taken unsuccessfully or with only partial success, the Corporation or any other person claiming the sum due or the balance of the sum due, as the case may be, may recover such amount by suit brought in any Court of competent jurisdiction against the person liable for the same.

Recovery of certain dues.

Recovery of certain dues by distress and sale.

526. In any case not expressly provided for in this Act or in any rule or by-law made thereunder, any sum due to the Corporation on account of any charge, costs, expenses, fees, rates or rent or on any other account under this Act or under any such rule or by-law shall be recoverable by distress and sale of the movable property of the person from whom such sum is due, in the manner provided by Chapter XVI.

Obstruction of owner by occupier.

Application to Small Cause Court by owner when occupier prevents his complying with Act, etc.

527. (1) The owner of any land or building may, if he is prevented by the occupier thereof from complying with any provision of this Act or of any

(*Part IX.—Chapter XXXVII.—Procedure.—Sections 532—534.*)

establishments of the said Magistrates, and all other incidental charges in connection with such establishments.

(*4*) Each such Magistrate shall have jurisdiction over the whole of Calcutta.

Cognizance of offences.

532. All offences against this Act or against any rule or by-law made thereunder, whether committed in or without Calcutta, shall be cognizable by any Magistrate having jurisdiction in Calcutta; and such Magistrate shall not be deemed to be incapable of taking cognizance of any such offence or of any offence against any enactment hereby repealed by reason only of his being—

(*a*) liable to pay any municipal rate or other tax, or

(*b*) benefited by the Municipal Fund to the credit of which any fine imposed by him shall be payable.

Power to Magistrate to hear case in absence of accused when summoned to appear.

533. If any person summoned to appear before a Magistrate to answer a charge of an offence against this Act or against any rule or by-law made thereunder fails to appear at the time and place mentioned in the summons, the Magistrate may, if—

(*a*) service of the summons is proved to his satisfaction, and

(*b*) no sufficient cause is shown for the non-appearance of such person,

hear and determine the case in his absence.

Limitation of time for prosecution.

534. (*1*) No person shall be liable to punishment for any offence against this Act or against any rule or by-law made thereunder, unless complaint of such offence is made before a Magistrate within three months, or, if the offence be against the provisions of section 136, within six months, next after—

(*a*) the date of the commission of such offence, or,

(*b*) if such date is not known or the offence is continuous in its nature, the date on which the commission or existence of such offence was first brought to the notice of the Corporation or the Executive Officer.

(*2*) Failure to take out a license under this Act shall be deemed, for the purposes of sub-section (*1*), to be a continuing offence until the expiration of the period for which the license is required to be taken out.

(*3*) When, before the expiration of the period of limitation prescribed by sub-section (*1*) for a prosecution for failure to comply with a requisition made by the Corporation under sections 343, 344 or 346, a notice under section 359, sub-section (*1*), has been sent to the Corporation by any person to whom such requisition has been addressed, a fresh period of limitation of three months for such prosecution shall be computed from the expiration of the period of six months or more referred to in section 359, sub-section (*3*).

PART X.

CHAPTER XXXVIII.

SUPPLEMENTAL PROVISIONS.

Extension of Act to Howrah and to other municipalities in the neighbourhood of Calcutta.

Power to Local Government to notify intention to extend Act to Howrah or other neighbouring municipality.

540. The Local Government may, by notification published in the *Calcutta Gazette* and in such other manner as they may determine, declare their intention to extend to the Municipality of Howrah or to any other municipality in the neighbourhood of Calcutta, or to any part thereof, subject to the modifications and restrictions (if any) specified in such notification, all or any portions of this Act which do not already apply thereto.

Power to Local Government to extend Act after considering objections.

541. (*1*) The Commissioners of the Municipality of Howrah or of such other neighbouring municipality as may be specified in a notification published under section 540, or any inhabitants or rate-payers thereof, may, if they object to the declaration contained therein, submit their objection in writing to the Local Government within such period as may be specified in this behalf in the said notification; and the Local Government shall take such objections into consideration.

(*2*) When the said period has expired, and the Local Government have considered the objections (if any) which have been submitted under sub-section (*1*), the Local Government may, by notification in the *Calcutta Gazette*, extend to the Municipality of Howrah or to the said neighbouring municipality, or to the part thereof specified in the said notification, as the case may be, all or any of the portions of this Act which were specified in that notification, subject to the modifications and restrictions (if any) specified therein or subject to such other modifications or restrictions (if any) as the Local Government may think fit, or without modification or restriction of any kind.

Effect of extension of Act.

542. If all or any portions of this Act which do not already apply to the Municipality of Howrah or to any other municipality in the neighbourhood of Calcutta be extended to such municipality, or to any part thereof, under section 541, then—

(*a*) the Bengal Municipal Act, 1884, or the corresponding portions of that Act, as the case may be, shall be repealed in the said municipality or part on and from the date of such extension; and, Ben. Act III of 1884.

(*b*) except as the Local Government may otherwise by notification in the *Calcutta Gazette* direct, all rules, by-laws, orders, directions and powers made, issued or conferred under the portions of this Act which have been so extended and in force at the date of such extension, shall apply to the said municipality or part, in supersession of all corresponding rules, by-laws, orders, directions and powers made, issued or conferred under the said Bengal Municipal Act, 1884.

Explanation.—The extension to the Municipality of Howrah or to any other municipality in the neighbourhood of Calcutta, or to any part

(Part X.—Chapter XXXVIII.—Supplemental provisions.—Sections 547—549.)

(2) No person so arrested shall be detained in custody after his true name and address are ascertained or, without the order of a Magistrate, for any longer time (not exceeding at the most twenty-four hours from the arrest) than is necessary for bringing him before a Magistrate.

(3) On the written application of the Executive Officer, the Deputy Executive Officer, the Chief Engineer, the City Architect or the Health Officer, any police-officer above the rank of constable shall arrest any person who obstructs any municipal officer or servant in the exercise of any of the powers conferred by this Act or by any rule or by-law made thereunder.

Special provisions as to land and buildings in Hastings.

Control by General Officer Commanding the Presidency District over Government land and buildings.

547. Notwithstanding anything contained in this Act, all land and buildings belonging to the Government in that part of Hastings which is included in Calcutta shall be subject to the control of the General Officer Commanding the Presidency District:

Provided that this section shall in no way derogate from the powers vested in the Corporation under Chapters XVII and XVIII and any other provision of this Act enabling them in the interests of the public health to require the owner or occupier of any land or building in such part of Hastings to remedy or abate any sanitary defect on or in such land or building.

Sanction of Government of India required to erection of masonry building.

548. The Corporation shall not give or be deemed to have given permission to erect a masonry building in that part of Hastings which is included in Calcutta unless and until the sanction of the Government of India has been obtained; and such sanction shall not be applied for unless the plan of the building and the site-plan of the land are approved by the Commissioner of Police.

Demolition or alteration of buildings erected without such sanction.

549. *(1)* If the erection of any masonry new building in that part of Hastings which is included in Calcutta is, after the commencement of this Act, commenced, carried on or completed without obtaining the sanction of the Government of India, the Executive Officer shall, if requested by the General Officer Commanding the Presidency District to do so,—

(*a*) by written notice direct the owner to demolish or alter the building, or

(*b*) himself cause the building to be demolished or altered at the expense of the owner.

(Part X.—Chapter XXXVIII.—Supplement provisions.—Section 558.)

(2) The references to the General Committee in section 56, sub-section (1) and section 65, sub-sections (1), (2) and (3) of the Calcutta Improvement Act, 1911, shall be construed as references to the Corporation. Ben. Act V. of 1911.

Saving of prior enactments.

558. Except as in this Act otherwise expressly provided, nothing in this Act shall be deemed to affect the provisions of any other enactment.

SCHEDULE II.

CORRUPT PRACTICES.

[*See sections 3 (17), 22 (3), 46 and 47.*]

The following shall be deemed to be corrupt practices for the purposes of this Act:—

PART I.

Bribery.

1. A gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being, a candidate, or

(*b*) an elector to vote or refrain from voting at an election,

or as a reward to—

(*a*) a person for having so stood or not stood or for having withdrawn his candidature, or

(*b*) an elector for having voted or refrained from voting.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bonâ fide* incurred at or for the purposes of any election and duly entered in the return of election expenses prescribed by this Act.

Undue influence.

2. (*1*) Any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, by any of the means hereafter specified, with the right of any person to stand or not to stand or to withdraw from standing as a candidate, or with the free exercise of the franchise of an elector.

(*2*) The means above alluded to are—

(*a*) any violence, injury, restraint, or fraud and any threat thereof;

(*b*) any threat to a person or inducement to a person to believe that he or any person in whom he is interested will become or be rendered an object of divine displeasure or spiritual censure;

but do not include any declaration of public policy or promise of public action.

Personation.

3. The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person who has voted once at an election for a voting paper in his own name at the same election.

(*Schedule III.—List of Constituencies.*)

Name of constituency.	Extent of constituency.	Number of Councillors to be elected.	Number of seats included in column 3 reserved for Muhammadans.
1	2	3	4
	B.—Special Constituencies.		
Bengal Chamber of Commerce.	Non-territorial ...	Six.	
Calcutta Trades Association.	Non-territorial ...	Four.	
Calcutta Port Commissioners.	Non-territorial ...	Two.	

(*Schedule IV.—List of constituencies.*)

Name of constituency.	Extent of constituency.	Number of Councillors to be elected.
1	2	3
***B.—Muhammadan Constituencies*—concld.**		
Muhammadan constituency No. VI—		
Belgachia	Ward No. 30 ...	One.
Satpukur	Ward No. 31 ...	
Cossipur ...	Ward No. 32 ...	
Muhammadan constituency No. VII—		
Garden Reach ...	Ward No. 26 ...	Two.
C.—Special Constituencies.		
Bengal Chamber of Commerce ...	Non-territorial ...	Six.
Calcutta Trades Association ...	Non-territorial ...	Four.
Calcutta Port Commissioners ...	Non-territorial ...	Two.

SCHEDULE VI.

RULES AS TO LICENSES FOR THE EXERCISE OR CARRYING ON OF PROFESSIONS, TRADES AND CALLINGS.

(See sections 20, 175, 176, 177 and 211.)

Classes of licenses and tax on each.

1. Every license shall be granted under one or other of the classes mentioned in the second column of the following table, and there shall be paid annually for the same the fee mentioned in that behalf in the third column of that table:—

1	2		3
Serial No.	Classes.		Fees.
	CLASS I.		
1	Company or association or body of individuals, the paid up capital of which is equivalent to twenty lakhs of rupees or upwards,	which exercises or carries on any profession, trade or calling whatsoever.	Five hundred rupees.
	CLASS II.		
2	Company or association or body of individuals, the paid-up capital of which is equivalent to ten lakhs of rupees or upwards,	which exercises or carries on any profession, trade or calling whatsoever but is not included in Class I.	Two hundred and fifty rupees.
	CLASS III.		
3	Merchant, banker, wholesale trader, commission agent, engineer, architect, builder, contractor, auctioneer or carrier,	the rent of whose place of business is valued under Chapter X at Rs. 1,000 *per mensem* or upwards.	Two hundred rupees.
4	Taxi-cab owner, having twenty or more taxi-cabs.	......	Ditto
	CLASS IV.		
5	Company or association or body of individuals, the paid-up capital of which is equivalent to one lakh of rupees or upwards,	which exercises or carries on any profession, trade or calling whatsoever but is not included in Class I or Class II.	One hundred rupees.
6	Merchant, banker, wholesale trader, commission agent, engineer, architect, builder, contractor, auctioneer or carrier,	who is not included in Class III and the rent of whose place of business is valued under Chapter X at Rs. 350 *per mensem* or upwards.	Ditto.
7	Owner or occupier of a cotton, jute, hide or other screw-house or press-house,	the rent of whose place of business is valued under Chapter X at Rs. 350 *per mensem* or upwards.	Ditto.

(Schedule VI.—Rules as to licenses for the exercise or carrying on of professions, trades and callings.—Rule 1.)

1	2		3
Serial No.	Classes.		Fees.
	Class VI.		
36	Consulting and practising physician, practising surgeon, licentiate of medicine or surgery, *kabiraj*, graduate of the Bengal Veterinary College, midwife, dentist, barrister, attorney, *vakil* of the High Court, proctor, notary public, public accountant, average adjuster, statistical reporter, analyst, *shroff* or *banian*,	by whom no income-tax is payable.	Twenty-five rupees.
37	Insurance agent, broker or canvasser.	......	Ditto.
38	Purchaser of goods in Calcutta for transport and sale beyond the limits of Calcutta.	......	Ditto
39	Broker in precious stones. ...	......	Ditto.
40	Surveyor (including a licensed building surveyor) or professional measurer.	......	Ditto.
41	Practising apothecary, or practising veterinary surgeon.	......	Ditto.
42	Keeper of a billiard room. ...	......	Ditto.
43	Owner or occupier of a wholesale tobacco, jute or other depôt,	who is not included in Class V, and the rent of whose place of business is valued under Chapter X at Rs. 30 *per mensem* or upwards.	Ditto.
44	Pleader,	by whom no income-tax is payable.	Ditto.
45	Printer, publisher, lithographer, engraver, die-sinker, photographer or phototyper,	who is not included in Class IV or Class V, and the rent of whose place of business is valued under Chapter X at Rs. 30 *per mensem* or upwards.	Ditto
46	Dyer or cleaner,	the rent of whose place of business is valued under Chapter X at Rs. 30 *per mensem* or upwards.	Ditto.
47	Owner or occupier of a cotton, jute, hide or other screw-house or press-house,	who is not included in Class IV or Class V, and the rent of whose place of business is valued under Chapter X at Rs. 30 *per mensem* or upwards.	Ditto.

(*Schedule VI.—Rules as to licenses for the exercise or carrying on of professions, trades and callings.—Rule 2.*)

1	2		3
Serial No.	Classes		Fees.
	Class VII—*concld.*		
76	Plumber, electric-fitter or gas-fitter,	who is not included in Class V or Class VI, and the rent of whose place of business is valued under Chapter X at Rs. 15 *per mensem* or upwards.	Twelve rupees.
77	Carriage-dealer or horse-dealer,	who is not included in Class VI and the rent of whose place of business is valued under Chapter X at Rs. 15 *per mensem* or upwards.	Ditto.
78	Owner of any carriage, passenger-boat or palanquin which is let out for hire,	the rent of whose place of business is valued under Chapter X at Rs. 15 *per mensem* or upwards.	Ditto.
79	Band-supplier or stamp-vendor,	Ditto ...	Ditto.
	Class VIII.		
80	Keeper of a shop or other place of business,	who is not included in any other class.	Four rupees.
81	Pedlar, vendor of goods in carts, hawker or *box wallah*,	who is not included in Class IX.	Ditto.
82	Professional petition, letter or bill-writer.	......	Ditto.
	Class IX.		
83	Itinerant dealer hawking goods for sale in a basket or tray.	......	One rupee.

Licenses to be either personal or local.

2. (*1*) Licenses shall be either personal or local.

(*2*) "Personal license" means a license which is not a local license, and includes a license granted to a company or association or body of individuals.

(*3*) "Local license" means—

(*a*) a license the classification of which depends on the valuation of the place of business, and

(*b*) a license granted under Class IV, number 13, or Class V, number 32, or number 33, or Class VI, number 42, or number 43, or class VII, number 64, or number 69, or class VIII, number 80, in the table in rule 1.

(Schedule VI.—Rules as to licenses for the exercise or carrying on of professions, trades and callings.—Rules 13-17.)

(2) If the Executive Officer considers that any person who has taken out a license for the current year ought to have taken out a license under a higher class, he may serve such person with a notice directing him forthwith to take out a license under such higher class for that year:

Provided that when such license under a higher class has been taken out, the amount paid in respect of the license in the lower class shall, unless such person is liable to take out both licenses, be refunded to him.

Executive Officer to prove liability when service of notice not proved.

13. When any person is summoned for not taking out a license, and service of notice under rule 12, sub-rule (*1*), is not proved, it shall be incumbent on the Executive Officer to prove that the person so summoned is liable to take out a license, and to state the class under which he is so liable.

Appeal to Bench or to Court of Small Causes.

14. Any person dissatisfied with an order made under this schedule may appeal either—

(*a*) to a Bench consisting of not less than three Councillors or Aldermen to be elected by the Corporation; or

(*b*) to a Court of Small Causes having jurisdiction in the place in which the profession, trade or calling is alleged to be exercised or carried on:

Provided that no appeal shall lie under this rule unless the amount payable for the license, as assessed in accordance with the said notice, has been deposited with the Corporation:

Provided also that where an assessee has taken out a license for the next preceding year, the sum to be deposited under the first proviso to this rule shall not exceed the amount which he paid in such year.

Statement by appellant.

15. Any person who is desirous of appealing under rule 14 shall, within thirty days of the passing of the order or the service of the notice, referred to in that rule, submit to the Secretary to the Corporation a petition setting forth the grounds of appeal,

and the petitioner shall intimate whether he intends to appeal to the Bench under clause (*a*), or to a Court of Small Causes under clause (*b*), of rule 14:

Provided that no appeal shall be made to a Court of Small Causes under rule 14 until the expiration of a period of one month from the submission of a petition under this rule.

Procedure of Court in appeal.

16. When an appeal is made under these rules to a Court of Small Causes, the Court may follow the procedure prescribed in section 528, and the order of the said Court shall be final.

Finality of order of Corporation or Executive Officer when no appeal.

17. When no appeal is preferred under these rules, the order of the Corporation or the Executive Officer, as the case may be, shall be final.

(*Schedule VII.—Wards for purposes of valuation.*)

Serial number of Ward.	Name of Ward.	BOUNDARIES OF WARD— On the north.	On the south.	On the east.	On the west.
1	2	3	4	5	6
21	Ballyganj ...	Lower Circular Road, the Calcutta Improvement Trust new 100 ft. road running from Beckbagan Lane and Lower Circular Road Corner and meeting the Park Circus, the new 100 ft. Calcutta Improvement Trust Road from the Park Circus meeting Darga Road and, in its continuation, the new 60 ft. Calcutta Improvement Trust Road from Darga Road to the Eastern Bengal Railway, thence along Tiljala Road to the point where it meets Topsia Road, South.	Hazra Road, Bondel Road and a line drawn straight from the Eastern Bengal Railway to the southern edge of Tiljala Masjidbari Lane, and the southern edge of Tiljala Masjidbari Lane.	Topsia Road, South, Tiljala Masjidbari Lane and the Eastern Bengal Railway line.	Lansdowne Road
22	Bhowanipur ...	Lower Circular Road.	Hazra Road, Nepal Bhattacharji Street to Tolly's Nullah.	Lansdowne Road and Russa Road, South.	Tolly's Nullah and Zeerut Bridge Approach
23	Alipur ...	Tolly's Nullah ...	Tollyganj Circular Road and the southern boundary of the land acquired by the Port Commissioners for the Dock extension as existing at the time of the commencement of the Act up to the point where it meets Diamond Harbour Road.	Tolly's Nullah ...	Diamond Harbour Road and Kidderpore Bridge Approach
24	Ekbalpur ...	Circular Garden Reach Road.	Shahapur Road, Guragacha Road and Taratala Road.	Diamond Harbour Road.	Hide Road.
25	Watganj and Hastings.	Clyde Road, Strand Road and a line drawn in continuation of the south side of Strand Road to the river and the River Hooghly.	Circular Garden Reach Road and the southern edge of the line of old Taratala Road.	St. George's Gate Road, the Kidderpore Bridge approach and Hide Road.	The western edge of the line of old Taratala Road and a line in continuation thereof up to the River Hooghly.

SCHEDULE IX.

SCAVENGING-TAX.

(See section 179.)

PART I.—PERSONS BY WHOM THE TAX IS PAYABLE.

Hackney-carriage owner.
Carter.
Milk-seller.
Horse-dealer.
Donkey owner.
Swineherd.
Shepherd.
Goatherd.
Owner or occupier of a market.

PART II.—RATES OF FEE FOR LICENSES.

	Per half-year. Rs.	A.	P.
For every horse	6	0	0
" " pony or mule of or over 13 hands ...	6	0	0
" " pony or mule under 13 hands	3	0	0
" " bull or buffalo used for drawing a cart ...	1	8	0
" " cow or buffalo kept by a milk-seller ...	0	12	0
" " donkey or swine	0	12	0
" " ten sheep or goats	3	0	0
For every twelve cubic feet of offensive matter and rubbish, or part thereof, removed on an average daily from a market	30	0	0

SCHEDULE XII.

TABLE OF FEES PAYABLE ON WARRANTS OF DISTRESS.

[*See section 191 (3).*]

Sum distrained for.	Fee. Rs.	A.
Under 5 rupees	0	4
Rupees 5 and under Rs. 10	0	8
„ 10 „ „ 15	0	12
„ 15 „ „ 20	1	0
„ 20 „ „ 25	1	4
„ 25 „ „ 30	1	8
„ 30 „ „ 35	1	12
„ 35 „ „ 40	2	0
„ 40 „ „ 45	2	4
„ 45 „ „ 50	2	8
„ 50 „ „ 60	3	0
„ 60 „ „ 80	3	12
„ 80 „ „ 100	4	8
Above 100 rupees	5	0

The above fees are to include all expenses except when peons are kept in charge of property distrained in which case eight annas shall be paid daily for each peon so employed.

(Schedule XIV.—Rules as to private connections to premises and meters.—Rules 5-7.)

(*b*) if any premises be so situated that the ferrule prescribed therefor in the said table or under proviso (*a*) is too small to pass, within a period of six hours, the daily supply of water to which the occupier of the premises is entitled under section 223, the Corporation shall permit the use of a larger ferrule for such premises.

(*2*) Where a ferrule used at the commencement of this Act for the supply of water to any premises is larger than that prescribed for such premises in sub-rule (*1*) or under proviso (*a*) to that sub-rule, as the case may be, the Corporation may, at the expense of the municipal fund and after giving one month's notice in writing to the owner of the premises, substitute for such ferrule one of the size so prescribed.

Construction of service-pipes, ferrules and works.

5. (*1*) The service-pipe for carrying water from the municipal mains into any premises, and the pipes, taps and works (other than ferrules) within such premises, shall be of such character, dimensions and materials as the Corporation may fix and approve, and shall be made and constructed at the expense of the person requiring the same.

(*2*) The said ferrules shall be of such character and material as the Corporation may fix and approve, and except as provided in rule 4, sub-rule (*2*), shall be affixed at the expense of the occupier of the premises.

(*3*) The said service-pipe, and all fittings thereon for carrying water from the municipal mains into any premises, and all ferrules, pipes, taps, works and fittings inside the premises, shall in all cases be executed subject to the inspection of the Corporation and to their satisfaction;

and the connection of premises with the municipal mains, and the laying of supply-pipes under any public street or thoroughfare, shall be executed in the presence of a municipal officer authorized in that behalf, and in no other way.

(*4*) Such service-pipe, fittings, ferrules, pipes, taps and works may be made by the servants and workmen of the Corporation upon such terms as may be agreed upon between the Corporation and the person requiring the water-supply, or subject to such charges as may be fixed by them;

and, when they are to be so made, the Corporation may require the cost thereof to be paid or deposited before the work is executed.

Power to Corporation to inspect premises.

6. The Corporation may inspect any premises supplied with water under Chapter XVII in order to examine all pipes, taps, works and fittings connected with the supply of water, and to ascertain whether there is any waste or misuse of such water.

Replacing or alteration of fittings for supplying water.

7. (*1*) If any pipes, taps, works or fittings connected with the supply of filtered or unfiltered water in any premises be found, on examination by the Corporation, to be defective, they may, by written

SCHEDULE XV.

RULES AS TO DRAINS, PRIVIES AND URINALS.

[See sections 266, 273, 274, 277, 278, 282, 284, 285, 286, 287, 364 (6) and (7) and 488.]

Drains.

Plans of house-drains to be submitted to Corporation.

1. (*1*) Every person who intends to construct a house-drain, or to make any substantial additions to, or alterations in, a house-drain, shall send to the Corporation an application in such form (to be supplied free of charge) as may be prescribed by the Corporation, and shall state therein the name and address of the licensed plumber who will execute the work and the purposes for which the drain is to be used.

(*2*) Such application shall be accompanied by a plan, in triplicate unless the Corporation otherwise direct, drawn to a scale of eight feet to the inch (or such smaller scale as the Corporation may consider sufficient), and showing—

(*a*) the premises to be drained and the boundaries thereof,

(*b*) the position of all existing filtered water pipes within the premises,

(*c*) the alignment, gradient and size of the proposed house-drain and its appurtenances,

(*d*) any existing drains and their appurtenances, and

(*e*) any other particulars which may be prescribed by the Corporation.

Material and joints.

2. Every underground house-drain constructed after the commencement of this Act shall consist of good sound pipes made of glazed stoneware or other suitable material, and shall have water-tight joints made of Portland cement or any other cement approved by the Executive Officer.

Size.

3. Every such house-drain shall be of adequate size, with an internal diameter of not less than—

(*a*) six inches between the master-trap and the sewer, and

(*b*) four inches at all other places.

Angles.

4. No such house-drain shall be so constructed as to form in any of such drains a right-angled junction, either vertical or horizontal, and every branch drain or tributary drain shall be joined to another drain obliquely, at an angle of not less than one hundred and thirty-five degrees, in the direction of the flow of such other drain.

How to be laid

5. Every such house-drain shall be—

(*a*) laid upon a bed of good concrete of such width as may be approved by the Executive Officer, and not less than six inches thick,

(Schedule XV.—Rules as to drains, privies and urinals.—Rules 10-12.)

Ventilation of soil-pipe of connected privy or urinal detached from building.

10. Where any such connected-privy or connected-urinal has no internal communication with any building other than the privy or urinal, then,—

(*a*) if the distance between the privy or urinal and the trap provided under rule 7, sub-rule (*1*), in the drain with which the privy or urinal communicates is not more than ten feet, no ventilation-pipe need be fixed in the soil-pipe;

(*b*) if the said distance is more than ten feet but not more than thirty feet, a ventilation-pipe shall be fixed in the soil-pipe at a point as far distant as may be practicable from the trap provided under rule 7, sub-rule (*1*); and such pipe shall be placed vertically to such height and in such manner as effectually to prevent any escape of foul air from the pipe into any building in the vicinity thereof, and in no case to a less height than ten feet, and shall be of a sectional area not less than that of the drain with which it communicates, and not less than the sectional area of a pipe of the diameter of four inches;

(*c*) if the said distance is more than thirty feet the soil-pipe shall be ventilated in the manner prescribed by rule 8.

Waste-pipes.

11. (*1*) The following pipes in any new building, namely:—

(*a*) the waste-pipe from any bath-sink (not being a slop-sink constructed or adapted to be used for receiving sewage) or lavatory,

(*b*) the overflow-pipe from any cistern or from any safe under a bath or connected-privy or connected-urinal, and

(*c*) every other pipe for carrying off waste water,

shall be taken through an external wall of the building, may, if the Executive Officer so directs, be provided with a suitable trap, and shall be so constructed as to discharge into the open air over a channel leading to a trapped gully-grating at least eighteen inches distant from that end of the pipe from which the water issues.

(*2*) The waste-pipe in any such building from any slop-sink constructed or adapted to be used for receiving sewage shall be constructed so as to comply with such of the rules in this schedule as relate to the soil-pipe of a connected-privy or connected-urinal.

Open house-drains.

12. (*1*) Every open house-drain constructed after the commencement of this Act, or provided for a new building, for the purpose of discharging surface or sullage water, shall be constructed of brick masonry or concrete covered with a plaster containing not less than twenty-five *per cent.* of Portland cement or any other cement approved by the Executive Officer or of natural or artificial stone, or of glazed half-round pipes.

(Schedule XV.—Rules as to drains, privies and urinals.—Rules 20-23.)

(*vi*) any other particulars which may be prescribed by the Corporation :

Provided that where any privy or urinal forms part of any building for which an application has been made under rule 52 of Schedule XVII, the particulars required under this rule may be attached to such application.

Power to Corporation to refuse to sanction service-privy or service-urinal which will be a nuisance.

20. The Corporation may, for reasons to be recorded by them in writing and furnished to the applicant free of charge, refuse to grant permission to erect any service-privy or service-urinal which will, in their opinion, be a nuisance.

Regulation of site of service-privies and service-urinals.

21. (*1*) No service-privy or service-urinal exceeding eleven feet in height shall be placed in the space required by this Act to be left at the back of a building.

(*2*) No service-privy or service-urinal situated in, or adjacent to, a building shall be placed at a distance of less than six feet from—

(*i*) any public building, or

(*ii*) any building which is, or is likely to be, used as a dwelling-place, or a kitchen, or as a place in which any person is, or is intended to be, employed in any manufacture, trade or business.

(*3*) No service-privy or service-urinal shall be constructed in any premises occupied by a masonry building, or, without the special sanction of the Corporation, in any other premises which are situated in a street which has been sewered and has an adequate unfiltered water-supply.

(*4*) Every service-privy and service-urinal shall be detached from the inhabited portion of any building.

Power to Corporation to require substitution of connected-privies for service-privies and connected-urinals for service-urinals.

22. (*1*) No service-privy or service-urinal shall be placed on any upper floor of a building :

Provided that, if in any case the Corporation considers it impracticable or inexpedient to provide a connected-privy or a connected-urinal, they may, by written notice, authorize the owner of the building to erect a service-privy or a service-urinal, as the case may be.

(*2*) The Corporation may, by written notice, require the owner of any building to convert any service-privy into a connected-privy and any service-urinal into a connected-urinal.

Power to Corporation to require owner to provide access to service-privy or service-urinal from street.

23. (*1*) If there is no convenient access from a street to any service-privy or service-urinal, and if the Corporation consider it inexpedient to require that the privy or urinal be converted into a connected-privy or connected-urinal, as the case may be, they may, if they think fit, by written notice, require the owner of the privy or urinal to form a passage giving access thereto from a street.

(*2*) Every notice served under sub-rule (*1*) shall require that such passage be formed at ground-level, be not less than four feet wide, and be provided with a suitable door, and shall inform the said owner that the passage may, at his option, be either open to the sky or covered in.

(Schedule XV.—Rules as to drains, privies and urinals.—Rules 33-37.)

(3) Every urinal shall be provided with adequate flushing arrangements to the satisfaction of the Chief Engineer.

(4) For the purpose of supplying water to the flushing cistern of a connected-privy or connected-urinal a reserve tank of such capacity as may be prescribed by the Corporation shall be provided at a height sufficient to supply the cistern with water, and in case the reserve tank is situated at such a height that it cannot be supplied direct from the street main, the owner of the premises shall provide a suitable pump and shall make all necessary arrangements to ensure a satisfactory supply of water to the reserve tank :

Provided that where the height of the building containing such privy or urinal does not exceed the number of feet for which the pressure of unfiltered water is required by or under this Act for that street, the provisions of this sub-rule shall not be put into operation.

Pan for connected-privies and urinals.

33. Every connected-privy and connected-urinal shall be provided with a pan of such form and dimensions as may be approved by the Chief Engineer.

Water-trap.

34. Every connected-privy and connected-urinal shall be provided with an air-tight water-trap immediately below the pan.

Syphon-trap and anti-syphonage pipe.

35. (1) Every connected-privy and connected-urinal shall be provided with a syphon-trap which shall be proof against syphonage.

(2) In all cases where a connected-privy or connected-urinal is more than one storey high, an anti-syphonage pipe having an internal diameter of not less than two inches shall be provided, and such pipe shall be carried independently to a height of at least two feet above the roof of the privy or urinal or the roof of the building in which such privy or urinal is situated.

Prohibition of "containers" and "D traps."

36. No "container" or other similar fitting shall be placed under the pan of a connected-privy or connected-urinal; and no trap of the kind known as a "D trap" shall be used with any such privy or urinal.

Soil-pipe for connected-privies and connected-urinals.

37. (1) Every connected-privy and connected-urinal shall be provided with a soil-pipe for carrying sewage to a municipal sewer.

(2) Such soil-pipe shall be provided with air-tight joints, and, if it be placed above ground, shall be made of metal approved by the Executive Officer.

(3) Such soil-pipe shall, in addition to the trap prescribed by rule 34, be provided with a trap placed at some point between the privy or urinal and the sewer referred to in sub-rule (1).

(*Schedule XVI.—Rules as to the regulation, maintenance, protection and repair of streets and public places.—Rules 3-5.*)

(*5*) On the breach of any such condition, the Corporation may, by written notice, require the owner or occupier of the said building to comply with such condition.

(*6*) At any time after permission has been given under sub-rule (*4*) to put up a verandah, balcony, sunshade, weather-frame or the like, to project from a building, the Corporation may, by written notice, require the owner or occupier of the building to remove such projection; and the owner or occupier shall be entitled to reasonable compensation out of the municipal fund on account of such removal:

Provided that no fee shall be charged for any verandah, balcony, weather-frame or the like when the same is situated in or over any street not vested in the Corporation.

Sky-signs.

3. (*1*) No person shall erect or maintain a sky-sign without the written permission of the Corporation, which shall not be granted unless the sign is so constructed and maintained as not to be dangerous to the public or likely to fall into any street or public place.

(*2*) Every written permission granted under sub-rule (*1*) shall continue in force for not more than one year from the date on which it was granted, and may be revoked at any time by the Corporation if they consider that the sky-sign for which it was granted has become dangerous to the public or is likely to fall into a street or public place.

Execution of works in public streets.

Guarding and lighting when public street opened or broken up and speedy completion of work.

4. (*1*) When any drain in, or the pavement or surface of, any public street is opened or broken up for the purpose of carrying on any work, or when any public street is under construction, the Corporation shall cause the place to be fenced and guarded and to be sufficiently lighted during the night and shall take proper precautions for guarding against accident, by shoring up and protecting adjoining buildings;

and shall, with all convenient speed, complete the said work, fill in the ground, and repair the said drain, pavement or surface, and carry away the rubbish occasioned thereby.

(*2*) No person shall, without lawful authority, remove any fence or shoring-timber, or remove or extinguish any light, set up under sub-rule (*1*).

Power to Corporation to prevent or restrict traffic in street during progress of work.

5. (*1*) When any work referred to in rule 4 is being executed in any public street, or when any other work which may lawfully be done is being executed in any street, the Corporation may direct that such street shall, during the progress of such work, be either wholly or partially closed to traffic generally or to traffic of any specified description.

(*2*) When any such direction has been given, the Corporation shall set up in a conspicuous position in or near the street an order prohibiting traffic to the extent so directed, and shall fix such bars, chains or

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building work.—Rule 3.*)

drawn across the street at an angle of forty-five degrees with the horizontal, such lines being drawn from the side of the street which is the more remote from the building in question, from a height of two feet above the centre of the street:

Provided as follows—

(*i*) where the said street is joined at an angle by another street facing the building, or where the street in which the building is situated terminates in front of the building, the height of that portion of the building which is opposite the street facing it measured from two feet above the centre of the street, shall in the former case, not exceed the height which would be permissible if the building abutted on or were situated on the side of a street equal in width to the width of the street on which it abuts or on the side of which it is situated *plus* half the width of the street facing it, and in the latter case, the height of the building shall not exceed the height which would be permissible if the building abutted on or were situated on the side of a street one-and-a-half times the width of the street terminating in front of it;

(*ii*) nothing herein contained shall affect the erection of a four-storeyed building abutting upon, or situated at the side of a street of not less than forty-five feet in width, if such building, including the parapet wall and the plinth, does not exceed fifty-six feet in height;

(*iii*) nothing herein contained shall affect the erection of a building abutting upon, or situated at the side of, a street of not less than sixty feet in width, if such building does not exceed eighty feet in height; and

(*iv*) no building exceeding eighty feet in height shall be erected without the special permission of the Corporation, who in granting such permission, may impose such conditions as they may think proper for the safety of the public and the safety and convenience of persons occuping the building.

Explanation.—If a building be placed at the edge of the street, its height, measured from two feet above the centre of the street, and excluding parapets as aforesaid, shall not exceed the average width of the street facing the site; but, if the building or one or more of its storeys be set back, the height of the building may be increased, subject to the condition that no portion of the building, after the height is increased, intersects any of the aforesaid lines.

(2) In the case of a new building erected on any portion of the site of the whole or part of a building

(*2*) Except with the sanction of the Corporation, the spread of the foundation shall be such that the pressure on the soil, taking into account the load on the floors and terrace-roof (if any) referred to in rules 15 and 17, shall not be greater than one ton on the square foot.

(*3*) The levels of the foundation shall be such as the Corporation may consider satisfactory.

Plinth.

9. The plinth of a masonry building, except in the case of motor garages and coach-houses, shall be at least two feet above the level of the centre of the nearest street:

Provided that the plinth of stables and cow-sheds, may be one foot above such level.

Footings for walls.

10. Every wall of a masonry building shall be constructed so as to rest upon proper footings having regular offsets and on each side of the wall a horizontal spread (equal on each such side) of not less than one-half the height of the footings, provided that when an adjoining wall interferes the footings may, subject to the provisions of rule 8, sub-rule (*2*), be omitted, where that wall adjoins.

Outer walls.

11. The outer walls of a masonry building shall be constructed of brick or some similar hard and incombustible substance.

Bonding of walls.

12. All walls of a masonry building shall be properly bonded.

Damp-proof course.

13. (*1*) Every wall of a masonry building shall have a damp-proof course at the level of the ground floor.

(*2*) Such damp-proof course may consist of sheet-lead, asphalt, slates laid in cement, vitrified bricks or any other durable material impervious to moisture.

Walls in building of more than one storey.

14. If a masonry building exceeds one storey in height,—

(*a*) every wall shall be solidly put together with—

(*i*) good cement, or

(*ii*) good lime, or

(*iii*) mortar compounded with good cement and sand or other suitable material, or

(*iv*) mortar compounded with good lime and sand or other suitable material;

(*b*) the proportions of the materials forming such mortar shall be such as are approved by the Corporation;

(*c*) no part of any wall, other than a cornice or moulding, shall overhang any part of a wall underneath it; and

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 25—27.)

(*b*) servants' houses, stables and other out-offices within the area of the site shall not be of more than two storeys or exceed twenty-four feet in height or twenty feet in depth, and shall not be placed on more than two sides of the dwelling-house or within twenty-four feet of the dwelling-house.

(*2*) If two-thirds of a building-site are left vacant under sub-rule (*1*) no building or part of a building shall be erected so as to encroach upon the area so left vacant:

Provided that the Corporation may at any time permit an excess area not exceeding five *per cent.* of the total area of the site to be covered in the case of a detached building where they are satisfied, for special reasons to be recorded in writing, that the convenience or amenity of the building will be substantially increased, if such excess area is permitted to be covered.

Size and ventilation of inhabited rooms

25. Every room in a domestic building which is intended to be used as an inhabited room—

(*a*) shall be in every part not less than ten feet in height, measured from the floor to the under-side of the beam on which the roof or ceiling rests;

(*b*) shall have a clear superficial area of not less than eighty square feet;

(*c*) shall have, for purposes of ventilation,

(*i*) windows opening directly into the external air, or into an open verandah, and having an opening of not less than one-fifteenth of the floor-area of the room, and

(*ii*) an aggregate opening of not less than one-seventh of the floor-area of the room, to be provided by windows, or windows and doors, opening directly into the external air or into an open verandah; and

(*d*) shall, if such room has a cubical area of three thousand cubic feet or less, be provided, for every six hundred cubic feet capacity or fraction thereof, with one or more ventilating openings aggregating not less than one-and-a-half square feet in area, near the ceiling and opening directly into the external air or into an open verandah:

Provided that the Corporation may, in their discretion, relax the provisions of clause (*a*) and clause (*d*).

Floor of inhabited room over stable, cattle-shed or cow-house.

26. Every room in a domestic building which is intended to be used as an inhabited room, and which is constructed over a stable, cattle-shed or cow-house, shall be separated from the stable, cattle-shed or cow-house by a floor of concrete or other impermeable material.

Lighting and ventilation of staircases.

27. In every domestic building constructed or adapted to be occupied in flats or tenements, the principal common staircase shall be adequately lighted and ventilated upon every storey.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 48—52.)

Width of staircases, internal corridors and passage-ways.

48. (*1*) No staircase, internal corridor or passage-way in a public building shall be less than six feet wide:

Provided that, where not more than two hundred persons are to be accommodated in any public building, any staircase, internal corridor or passage-way may be of any width not less than four feet six inches.

(*2*) Every staircase, internal corridor or passage-way in a public building, which communicates with any portion of the building intended for the accommodation of more than four hundred persons, shall be wider than six feet by six inches for every hundred persons over four hundred, subject to a maximum width of nine feet.

(*3*) Notwithstanding anything contained in sub-rule (*1*) and sub-rule (*2*), instead of a single staircase, corridor or passage-way of the width prescribed by sub-rule (*2*), there may be two staircases, corridors or passage-ways, each being of a width equal to at least two-thirds of the width so prescribed.

Division of wide staircase by hand-rail.

49. If the width of any staircase in a public building is eight feet or more, the staircase shall be divided by a hand-rail.

Separate means of exit from floors on different levels

50. If some of the persons accommodated in a public building are placed on a higher floor than others, separate means of exit, of the width prescribed by rule 48, sub-rules (*1*), (*2*) or (*3*), as the case may be, and communicating directly with a public street or an open space, shall be provided for each floor:

Provided that this rule shall not apply to a hotel or lodging-house, or to any public building which is used as a home, refuge or shelter.

Doors and barriers to open outwards.

51. All doors and barriers in a public building shall be made to open outwards, and no locks or bolts for closing the same from outside shall be affixed thereto.

Part VII.—Applications for permission to erect new buildings (other than huts).

Application to Corporation for permission to erect a masonry new building.

52. (*1*) Every person who intends to erect a new building (other than a hut) shall send to the Corporation an application for permission to execute the work, together with a site-plan of the land, a plan of the whole building, separate plans of each floor of the building, complete elevations and sections of the work and a specification of the work.

(*2*) Every document referred to in sub-rule (*1*) shall contain the particulars and be prepared in the manner hereinafter in this part prescribed in this behalf.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 54—56.)

Signature of plans, elevations and sections.

54. The plans, elevations and sections referred to in rule 52 shall be signed clearly and in a prominent place by the owner of the building and by the licensed building surveyor who has prepared the same as required by section 323.

Necessary employment of licensed building surveyor or other competent person to supervise building.

55. (*1*) Every person who intends to erect a new building (other than a hut) which is likely, in the opinion of the Corporation, to cost not less than fifty thousand rupees, or such other amount as may be fixed from time to time by the Corporation, shall employ a licensed building surveyor, or any other competent person who is approved by the Corporation, to supervise the erection of such building.

(*2*) The name of the person to be so employed shall be stated in the application made, under rule 52, in respect of such building.

(*3*) If the person to be so employed is not a licensed building surveyor, the Corporation may, within seven days of the receipt of the said application, refuse to approve his employment, and may return the application for amendment;

and such application shall thereupon be deemed not to have been made until it has been re-submitted duly amended.

(*4*) If the person so employed dies or ceases to be so employed before the completion of the said building, the further erection of the same may be continued for a period of a fortnight, but shall then be suspended until—

(*a*) a licensed building surveyor whose name shall forthwith be reported to the Corporation, or

(*b*) any other competent person approved by the Corporation,

has been employed to supervise such erection.

Formulation of requirements and objections.

56. (*1*) All information and documents which it may be found necessary to require, and all objections which it may be found necessary to make before deciding whether permission to erect a new building (other than a hut) should be given, shall be respectively required and made in one requisition, and the applicant shall be apprised thereof at the earliest possible date.

(*2*) Within fifteen working days after the receipt of any application under rule 52 for permission to execute any work, the Corporation may require the applicant—

(*i*) to furnish them with any information on matters referred to in that rule which has not already been given in the documents received thereunder, or with any document prescribed by that rule which has not been sent in; or

(*ii*) to satisfy them in regard to any objections which may have been taken under these rules to the grant of permission to execute the work.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 65—67.)

the work, the work shall not be commenced or continued until a fresh application has been made and a fresh permission granted under this schedule.

(2) At any time before the expiry of three years from the date on which such permission was given, the person to whom it was granted may apply to the Corporation for a certificate that the building has been commenced and a substantial portion of it already completed; and the Corporation shall thereupon cause the said building to be inspected, and if they consider that a substantial portion of it has been completed, they shall grant a certificate to that effect.

(3) If any masonry building, permission to erect which was granted before the commencement of this Act, is not wholly completed within three years from the commencement of this Act, the said permission shall be deemed to have lapsed, and any work done thereunder, after the said three years, shall be deemed to have been done without permission:

Provided that the Corporation may, for special reasons, extend the said period of three years.

Power to Corporation to cancel permission on the ground of material misrepresentation by applicant.

65. If, at any time after permission to erect any masonry building has been given, the Corporation are satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application made under rule 52, or in the plans, elevations, sections or specifications submitted therewith in respect of such building, they may cancel such permission, and any work done thereunder shall be deemed to have been done without permission.

Part VIII.—Huts.

Continuous lines.

66. (1) Huts in a *bustee* shall be built in continuous lines, in accordance with an alignment to be prescribed by the Corporation and demarcated on the ground, after hearing the objections (if any) of the owner of the *bustee* and the owners of the huts affected by the alignment.

(2) If the Corporation are of opinion that huts in a *bustee* are likely to be erected hereafter on any vacant land they may, after hearing the objections (if any) of the owner of the land and the owners of the huts affected by the alignment,—

(a) prescribe alignments for huts on such land, and

(b) from time to time alter such alignments.

Distance between eaves and alignment.

67. When an alignment has been prescribed under rule 66, no hut shall be erected so that the distance measured from its eave to such alignment is less than six feet.

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 82, 83.*)

(*2*) If it is intended to use the hut, or any part thereof, for any of the purposes specified in Schedule XIX, or as a stable, cattle-shed, or cow-house, the fact shall be expressly stated in the said application.

(*3*) The plans sent with such an application shall be drawn to a scale of not less than one-eighth of an inch to the foot, shall include a site-plan drawn to a scale of fifty feet to the inch, shall be properly coloured, shall be sent in triplicate, and shall show—

(*i*) the hut,

(*ii*) the privy provided or to be provided for the use of occupants of the hut,

(*iii*) the position and size of the doors and windows,

(*iv*) all existing buildings standing on the site,

(*v*) the means of access to the hut from the street or passage on which it abuts,

(*vi*) the position of the hut in relation to all huts, streets, passages, privies and tanks within a distance of fifty feet from the site, and

(*vii*) such other particulars as may be prescribed by the Corporation.

Explanation to clause (*iv*).—If it is intended to demolish or alter any existing building on the site, such building shall be particularly specified and it shall be expressly stated in the aforesaid application referred to in sub-rule (*1*) that the applicant undertakes to demolish or alter the same, as the case may be.

Power to Corporation to require further information or a proper site-plan.

82. (*1*) The Corporation may, on receipt of an application under rule 80, require the applicant—

(*a*) to furnish them with any information on matters referred to in rule 80 which has not already been given in the documents received thereunder, or with a proper site-plan as prescribed by that rule, or

(*b*) to satisfy them in regard to any objections which may have been taken under these rules to the grant of permission to execute the work.

(*2*) If any information or plan required under sub-rule (*1*) is, in the opinion of the Corporation, incomplete or defective, they may require further information or a fresh plan to be furnished.

(*3*) If any requisition made under sub-rule (*1*) or sub-rule (*2*) is not complied with within two months, the application received under rule 80 shall be refused.

Power to Corporation to employ licensed building surveyor to prepare site-plan, etc., for hut.

83. The Corporation may—

(*a*) on the application of any person who intends to erect a new building which is a hut, and

(*b*) on payment, by such person, of such fees as the Corporation may prescribe in that behalf,

employ a licensed building surveyor to prepare, in respect of such hut, the plans, sections and specifications prescribed by rule 80.

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rule 93.*)

(*d*) the construction of an internal wall or partition,

(*e*) any other alteration of the internal arrangements of a building which affects an alteration of its court-yard or court-yards or its drainage, ventilation or sanitary arrangements, or which affects its security,

(*f*) the addition of any building, room, out-house or other structure,

(*g*) the roofing of any space between one or more walls and buildings,

(*h*) the conversion into more than one place for human habitation of a building originally constructed as one such place,

(*i*) the conversion of two or more places of human habitation into a greater number of such places, or

(*j*) the alteration of a building for the purpose of effecting a partition amongst joint owners.

(*2*) In the case referred to in clause (*g*) of sub-rule (*1*), the said rules 52 to 65, or rules 80 to 89, as the case may be, shall apply only as regards the structure which is formed by roofing a space, and not as regards adjoining buildings.

Grant of provisional permission to proceed with work in cases of urgency.

93. (*1*) If, in any case of urgency arising from causes beyond his own control, any person desires to undertake without delay any of the works referred to in rule 92, he may send to the Corporation an application for provisional permission to proceed with the work.

(*2*) Such application shall contain an explanation of the urgency and a general description of the work proposed to be undertaken.

(*3*) Within a period of three days after the receipt of any such application, the Corporation shall, by written order, either grant or refuse to grant provisional permission to proceed with the work.

(*4*) If, within the said period of three days, the Corporation have neither granted nor refused to grant such provisional permission, the same shall be deemed to have been granted and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or of any rule or by-law made thereunder.

(*5*) Whenever such provisional permission is granted, and in any case provided for by sub-rule (*4*), the applicant shall, within fifteen days, send to the Corporation a regular application for permission to execute the work; and if he fails to do so, the provisional permission shall be deemed to be withdrawn.

(Schedule XVIII.—Rules for the inspection and regulation of land and buildings.—Rules 5—7.)

for the safety of the public or the inmates thereof: and may also, after giving them such notice as the Corporation may think necessary, require the inmates of the building to vacate it.

(3) The provisions of this Act and of any rules or by-laws made thereunder relating to buildings shall apply to any work done in pursuance, or in consequence, of a notice issued under sub-rule (1).

Power to Corporation to sell materials of buildings demolished in pursuance of notice issued under rule 4.

5. If any building, or any part of a building, be demolished by the Corporation under section 510, in pursuance of a notice issued under rule 4, they may sell the materials thereof and apply the proceeds of such sale in payment of the expenses incurred, and shall, on demand, restore to the owner any surplus arising from such sale.

Further powers to Corporation with reference to insanitary or congested buildings.

6. (1) Whenever the Corporation consider—

(a) that any building is, by reason of its having no plinth or having a plinth of insufficient height, or by reason of the want of proper drainage or ventilation, or by reason of the impracticability of cleansing, attended with risk to the health of the occupiers thereof or to the inhabitants of the neighbourhood, or is for any reason likely to endanger the public health, or

(b) that any block of buildings is, for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid,

they may cause a written notice to be fixed to some conspicuous part of the building or block, requiring the owners or occupiers thereof, or, at the option of the Corporation, the owners of the land occupied by such building or block, to execute such works or take such measures as the Corporation may deem necessary for the prevention of such risk.

(2) Where any building, or part thereof, in respect of which a notice has been issued under sub-rule (1), has been demolished in pursuance of an order made by a Magistrate under section 364, the Corporation shall pay reasonable compensation to the owner thereof.

Power to Corporation to direct the filling up, etc., of unwholesome wells, pools, etc.

7. (1) When—

(a) any well, pool, ditch, tank, pond, pit or marshy or undrained ground, or

(b) any cistern, reservoir, or water-butt or any other receptacle or place where water is stored or accumulates, or

(c) any waste or stagnant water, whether within any private enclosure or not,

appears to the Corporation to be or to be likely to become injurious to health or offensive to the neighbourhood or in any other respect a nuisance, they may, by written notice, require the owner or occupier of the land or building to which such well, pool, ditch, tank, pond, pit, ground, cistern, reservoir, water-butt, receptacle, place or water pertains,

SCHEDULE XX.

FORM OF CERTIFICATE.

(See sections 423 and 425.)

To[1]

I, the undersigned, public analyst for the do hereby certify that I received on the day of 19 , from[2] a sample of for analysis (which then weighed[3]) and have analysed the same and declare the result of my analysis to be as follows:—

I am of opinion that the same is a sample of

Observations.[4]

Signed this day 19 .

A. B.

at

---

[1] Here insert the name of the person submitting the article for analysis.

[2] Here insert the name of the person delivering the sample. If the sample is received by post or by railway, entry should be made accordingly.

[3] When the article cannot be conveniently weighed, this passage may be erased or the blank may be left unfilled.

[4] Here the analyst may insert, at his discretion, his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether it was in excess of what is ordinary or otherwise.

NOTE.—In the case of a certificate regarding milk, butter or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

SCHEDULE XXIII.

FORM OF NOTICE TO BE ISSUED ON YELLOW PAPER AND AFFIXED ON PREMISES WHEN OTHER MEANS OF SERVICE NOT AVAILABLE.

(*See sections 504 and 505.*)

To (*name and address*)

[*or*, to the owner or occupier of (*number of building or description of land and number of premises in assessment-book*).]

Take notice that a bill (*or, as the case may be*) has been issued against you to the following effect (*state the substance of the document*) and that you are required to (*state the requirement as mentioned in the document*).

Dated this day of

(*Signature of municipal officer or other person issuing the notice.*)

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

BENGAL ACT V OF 1923.

THE BENGAL CHILDREN (AMENDMENT) ACT, 1923.

An Act to amend the Bengal Children Act, 1922, with a view to facilitate its early extension to the town and port of Calcutta, the suburbs of Calcutta and Howrah.

Preamble. WHEREAS it is expedient to amend the Bengal Children Act, 1922, in the manner hereinafter appearing; Ben. Act II of 1922.

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title. **1.** This Act may be called the Bengal Children (Amendment) Act, 1923.

Amendment of section 1 of Bengal Act II of 1922. **2.** In sub-section (2) of section 1 of the Bengal Children Act, 1922 (hereinafter referred to as the said Act), after the word "force" the words "in whole or in part" shall be inserted and after the word "direct" the words "and for this purpose different dates may be appointed for different provisions of this Act and for different parts of the area defined in sub-section (3)" shall be added.

Amendment of section 28. **3.** To section 28 of the said Act the following shall be added, namely:—

"(4) Notwithstanding anything contained elsewhere in this Act, no order shall be passed sending a child to an industrial school, unless the court is satisfied that accommodation suitable for such child is available."

Amendment of section 37. **4.** To section 37 of the said Act the following shall be added, namely:—

"(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a Juvenile Court established for the suburbs of Calcutta, as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, or a Magistrate of the district of the 24-Parganas exercising powers under this Act, may inquire into and try in such place within Calcutta as the Local Government may direct the case of any child or young person who is accused of committing any offence within those suburbs, and such inquiry or trial shall for the purposes of jurisdiction be deemed to be held in the suburbs of Calcutta as so defined.

Any such accused person may be detained, pending trial or on conviction, in any place in Calcutta, which is set apart, under the provisions of this Act or the rules made thereunder, for the reception of children or young persons."

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 8, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1958L., dated Calcutta, the 1st August, 1923.—With reference to the Report of the Select Committee on the Calcutta Suppression of Immoral Traffic Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923 and in continuation of this office notification No. 1836L., dated the 21st July, 1923, it is notified that Dr. Hassan Suhrawardy, M.L.C., has signed the report.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

(*Sections 2, 3.*)

New sections 24B and 24C.

2. After section 24A of the Calcutta Port Act, 1890 (hereinafter called the said Act), the following shall be inserted, namely:—

"24B. (*1*) The Commissioners in meeting may, from time to time, set aside such sums out of their revenue surplus, as they think fit, as a reserve fund or funds for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, ship-wreck or other accident or for any other emergency arising in the ordinary conduct of their work under this Act:

Establishment of reserve fund.

Provided that the sums set aside as a reserve fund or funds shall not exceed such amount, annual or in the aggregate, as shall from time to time be prescribed by the Local Government.

(*2*) Such reserve fund or funds may be invested only in the promissory notes and other securities of the Government of India, or in the debentures issued by the Commissioners under this Act.

24C. (*1*) For the purposes of any investment which the Commissioners are authorised to make by this Act, it shall be lawful for the Commissioners in meeting to reserve and set apart any debentures or securities to be issued by them on account of any loan to which the approval of the Local Government has been given:

Power to reserve debentures or securities for Commissioners.

Provided that in the case of any issue offered to the public, the intention so to reserve and set apart such debentures or securities shall have been notified as a condition of the issue of the loan.

(*2*) The issue of any such debentures or securities direct to and in the name of the Commissioners themselves shall not operate to extinguish or cancel such debentures or securities, but every debenture or security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(*3*) The purchase by the Commissioners or the transfer, assignment or endorsement to the trustees of the sinking fund or the Commissioners, of any debenture or security issued by the Commissioners, shall not operate to extinguish or cancel any such debenture or security, but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred, assigned or endorsed to any other person."

Amendment of section 30.

3. In the proviso to section 30 of the said Act, for the words, letter and brackets "except clause (*g*) thereof" the following shall be substituted, namely:—

"except clauses (*g*) and (*h*) thereof."

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2078L, dated Calcutta, the 11st August, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the Local Legislature of Bengal having been assented to by the Governor General on the 4th August, 1923, is hereby published for general information.

BENGAL ACT VIII OF 1923.

THE BENGAL VILLAGE-CHAUKIDARI (AMENDMENT) ACT, 1923.

An Act further to amend the Village-chaukidari Act, 1870.

WHEREAS it is expedient further to amend the Village-chaukidari Act, 1870, in the manner hereinafter appearing : Ben. Act VI of 1870.

It is hereby enacted as follows :—

Short title. **1.** This Act may be called the Bengal Village-chaukidari (Amendment) Act, 1923.

New section substituted for section 11 of Bengal Act VI of 1870. **2.** For section 11 of the Village-chaukidari Act, 1870, the following shall be substituted, namely :

"11. The *panchayet* of a village shall determine the number of chaukidars to be appointed for that village, subject to the approval of the District Magistrate. Number of chaukidars.

Notwithstanding anything contained in this section, the number of chaukidars, employed for any village on the day on which the Bengal Village-chaukidari (Amendment) Act, 1923, comes into operation, shall continue to be the same until altered under the provisions of this section."

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Ligislative Council.

BENGAL ACT VII OF 1923.

THE BENGAL AERIAL ROPEWAYS ACT, 1923.

CONTENTS.

The Bengal Aerial Ropeways Act, 1923.

(Chapter I.—Preliminary.—Chapter II.—Aerial Ropeways for Public Traffic.—Procedure and Preliminary Investigations.—Section 3.)

(*5*) "local authority" means a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, and also includes a Local Board;

(*6*) "order" means an order authorising the construction of an aerial ropeway under this Act;

(*7*) "post" means a post, trestle, standard, strut, stay or other contrivance or part of a contrivance for carrying, suspending or supporting a rope;

(*8*) "prescribed" means prescribed by rules made by the Local Government under section 42;

(*9*) "promoter" means—

(*i*) the Local Government,

(*ii*) a local authority,

(*iii*) any person,

(*iv*) any company incorporated under the Indian Companies Act, 1913, or VII of 1913.

(*v*) any railway company as defined in the Indian Railways Act, 1890, IX of 1890.

in whose favour an order has been made under section 7 or under section 28, or on whom the rights and liabilities conferred and imposed on the promoter by this Act, and by rules and orders made under this Act as to the construction, maintenance and use of the aerial ropeway, have devolved or have been imposed by section 40;

(*10*) "rate" includes any fare, charge or other payment for the carriage of passengers, animals or goods on an aerial ropeway; and

(*11*) "rope" includes any cable, wire, rail or way, whether flexible or rigid, for suspending, carrying or hauling a carrier, if any part of such cable, wire, rail or way is carried overhead and is suspended from, or supported on, posts.

CHAPTER II.

Aerial Ropeways for Public Traffic.

Procedure and Preliminary Investigations.

Application for concession.

3. Every application by an intending promoter other than the Local Government for permission to undertake the necessary preliminary investigations in regard to a proposed aerial ropeway for the public carriage of passengers, animals or goods shall be submitted to the Local Government.

The Bengal Aerial Ropeways Act, 1923.

(*Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Inspection of Aerial Ropeways for Public Traffic.—Sections 7-10.*)

(*xii*) the points under the rope at which bridges or guards shall be constructed and maintained;

(*xiii*) the amount of security (if any) to be deposited by the promoter in the event of his application being granted;

(*xiv*) the traffic which may be carried on the ropeway, the traffic which the promoter shall be bound to carry, and the traffic which he may refuse to carry;

(*xv*) the maximum and minimum rates that may be charged by the promoter and the circumstances in which and the manner in which these rates may be revised by the Local Government; and

(*xvi*) such other matters as the Local Government may deem necessary.

Final order.

7. (*1*) If, after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the Local Government are of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, they shall make an order accordingly.

(*2*) Every order authorising the construction of an aerial ropeway for the public carriage of passengers, animals or goods shall be published in the *Calcutta Gazette*, and such publication shall be conclusive proof that the order has been made as required by this section.

Cessation of powers given by an order.

8. If a promoter authorised by an order to construct an aerial ropeway for the public carriage of passengers, animals or goods does not, within the time specified in the order,—

(*a*) succeed in raising the full amount of capital required for the completion of the ropeway, or

(*b*) substantially commence the construction of the ropeway, or

(*c*) complete the construction thereof,

the powers given to the promoter by such order shall, unless the Local Government prolongs the time so specified, cease to be exercised.

Opening of aerial ropeway to passenger traffic.

9. When the construction of an aerial ropeway has been authorised under this Act, for the public carriage of animals and goods only, the Local Government may, on application made by the promoter, sanction the opening of such ropeway for the public carriage of passengers also.

Inspection of Aerial Ropeways for Public Traffic.

Inspection of aerial ropeway before opening.

10. (*1*) No aerial ropeway intended for the public carriage of passengers, animals or goods shall be

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Construction and maintenance of Aerial Ropeways for Public Traffic.—Working of Aerial Ropeways for Public Traffic.—Sections 16-20.)

Removal of trees, structures, etc.

16. (*1*) Where any tree standing or lying near an aerial ropeway for public traffic, or where any structure or other object which has been placed or has fallen near any such ropeway subsequently to the issue of an order under section 7 in regard to such ropeway, interrupts or interferes with, or is likely to interrupt or interfere with, the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

(*2*) When disposing of an application under sub-section (*1*), the Collector shall, in the case of any tree in existence before the construction of the aerial ropeway, award to the person interested in the tree such compensation, if any, as he thinks reasonable, and the Collector may recover the same from the promoter in the same manner as an arrear of land revenue.

Explanation.—For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant.

Orders of Collector subject to revision by Local Government.

17. No suit shall lie, in respect of any matter referred to in the proviso to sub-section (*1*) of section 14, sub-section (*2*) of section 14, section 15 or sub-section (*1*) of section 16, but every order made by a Collector under any of those sections, and every award made by him under sub-section (*2*) of section 16, shall be subject to revision by the Local Government except in the case of an award of compensation made by the Collector on account of action taken under clause (*c*) of sub-section (*1*) of section 14, which award shall be subject to revision by the District Judge.

Working of Aerial Ropeways for Public Traffic.

Promoter may fix rates.

18. The promoter of an aerial ropeway for public traffic shall, for the purposes of working an aerial ropeway, and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix the rates for the carriage of passengers, animals or goods on the aerial ropeway.

Duty of promoter to work aerial ropeway without partiality.

19. No promoter shall, for the purposes of working an aerial ropeway for public traffic, make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in any respect whatsoever, or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Reporting of accidents.

20. When any of the following accidents occur in the course of working an aerial ropeway for public traffic, namely :—

(*a*) any accident attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; Act XLV of 1860.

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Purchase of Aerial Ropeways for Public Traffic.—Inability or Insolvency of Promoter.—Sections 25, 26.)

exceeding twenty *per cent.* of that value, as may be specified in the order passed under section 7, on account of compulsory purchase.

(*2*) Where a purchase has been effected under sub-section (*1*)—

(*a*) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the promoter or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(*b*) save as aforesaid, the order published under section 7 shall remain in full force, and the purchaser shall be deemed to be the promoter :

Provided that where the Local Government elects to purchase, the order under section 7 shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation.

(*3*) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the promoter by the Local Government or the local authority, as the case may be.

(*4*) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Local Government, waive its option to purchase, and enter into an agreement with the promoter for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (*1*) upon such terms and conditions as may be stated in the agreement.

Power to promoter to sell when option to purchase not exercised and order revoked by consent.

25. Where, on the expiration of any of the periods referred to in section 24, neither the Local Government nor a local authority purchases the undertaking, and the order published under section 7 is, on the application or with the consent of the promoter, revoked, the promoter shall have the option of disposing of all lands, buildings, works, materials, plant and apparatus belonging to the undertaking in such manner as he may think fit.

Inability or Insolvency of Promoter.

Proceedings in case of inability or insolvency of promoter.

26. (*1*) If, at any time after the opening of an aerial ropeway for public traffic, it appears to the Local Government that the promoter is insolvent or is unable to maintain the ropeway, or to work the same with advantage to the public, or at all, the Local Government may declare that the powers of the promoter, in respect of such aerial ropeway, shall, at the

The Bengal Aerial Ropeways Act, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Chapter IV.—Offences, Penalties and Arrest.—Sections 30, 31.)

Temporary occupation of land in case of private aerial ropeway.

30. If land is to be occupied temporarily in accordance with the provisions of sub-section *(1)* of section 28 on behalf of the promoter of an aerial ropeway for private traffic, and if the Local Government on the application of the promoter so direct, then the provisions of Part VI of the Land Acquisition Act, 1894, shall apply to such occupation, subject to the provisions that, notwithstanding anything contained in section 35 of the Land Acquisition Act, 1894, the occupation and use by the promoter of the land occupied shall continue for such period, not exceeding ten years, as the Local Government may fix, and that the compensation payable to the persons interested in such land shall be fixed with due regard to any additional loss or inconvenience caused to them by reason of such period of occupation, including loss caused by the interruption of the getting of minerals by reason of such occupation.

I of 1894.

CHAPTER IV.

Offences, Penalties and Arrest.

Failure of promoter to comply with Act.

31. If a promoter of an aerial ropeway for public traffic—

(*a*) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under section 7, or

(*b*) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of section 10, or

(*c*) fails to comply with the provisions of section 13, or

(*d*) fails to pay within a reasonable time any compensation awarded by the Collector or by the Local Government under sections 14, 15, 16 or 17, or

(*e*) contravenes any of the provisions of section 19, or

(*f*) fails to send notice of any accident as required by section 20, or

(*g*) fails to close an aerial ropeway in accordance with an order passed under sub-section *(1)* of section 21, or re-opens any aerial ropeway in contravention of sub-section *(2)* of that section, or

(*h*) continues to exercise the powers of a promoter in respect of any aerial ropeway, in contravention of the provisions of section 22 or section 26, or

(*i*) fails to comply with the provisions of section 27 or section 36, or

(*j*) contravenes any of the provisions of section 37, or

(*k*) contravenes the provisions of any rule made under section 42,

The Bengal Aerial Ropeways Act, 1923.

(Chapter V.—Supplementary Provisions.—Sections 41, 42.)

(*3*) The Local Government, on the application of the promoter or otherwise, may declare that the provisions of section 28 and of sub-section (*1*) of this section shall apply to any private aerial ropeway or class of private aerial ropeways for private traffic.

Power of Local Government to constitute an Advisory Board for aerial ropeways.

41. (*1*) The Local Government shall, by notification in the *Calcutta Gazette*, constitute an Advisory Board for aerial ropeways.

(*2*) Such Board shall consist of a Chairman to be appointed by the Local Government (who shall be a Chief Engineer to the Local Government) and two persons to be appointed by the Local Government as expert members.

(*3*) When any person is aggrieved by an order of the Local Government under section 7 or under section 21, such person, on payment of the prescribed fees, may, within thirty days of the said order, apply to the Local Government for revision of the same, and the Local Government shall take the advice of the Advisory Board in the prescribed manner and shall consider such advice and pass such orders in the matter as to the Local Government shall seem just and proper.

(*4*) With a view to enabling the Board to tender their advice under sub-section (*3*) the Board, with the consent of the Local Government and on payment of such further fees as may be prescribed, may make such further enquiry into the matter as the Board may consider to be necessary.

(*5*) The Local Government may, by general or special order,—

(*a*) define the further duties of, and regulate the procedure of, the Advisory Board,

(*b*) determine the tenure of office of the members of the Board; and

(*c*) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of such Board in the performance of his duty.

Power of Local Government to make rules.

42. (*1*) The Local Government may, after previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the conditions under which licenses for the construction of aerial ropeways over mining properties shall be granted, including conditions as to the assessment and payment of compensation for loss caused by the interruption of the getting of minerals by reason of such construction and conditions as to the removal of any portion of the ropeway to another alignment, to be fixed by arbitration if necessary, if at any time in the opinion of the Local Government the ropeway interferes with the raising of minerals;



The Calcutta Gazette

WEDNESDAY, SEPTEMBER 19, 1923.

PART III.

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No 2340L., dated Darjeeling, the 15th September, 1923.—In pursuance of the provisions of sub-section (3) of section 81 of the Government of India Act, the following Act of the local Legislature of Bengal having been assented to by the Governor General on the 12th September, 1923, is hereby published for general information :—

(*Sections 4-5.*)

(*6*) For the purpose of an inquiry under this section the Commissioner of Police may depute a Deputy Commissioner of Police to make a local investigation, and may take into consideration his report thereon.

(*7*) The Commissioner of Police shall maintain a register in which shall be entered a description of all houses, rooms and places in respect of which an order has been made under this section. Such register shall be open to inspection by the public on payment of the prescribed fee.

(*8*) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, in respect of which an order has been made on the lessee, tenant or occupier thereof directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on the business of a common prostitute, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

Removal and disposal of minor girls found in brothels, etc.

4. (*1*) The Commissioner of Police, or a Deputy Commissioner of Police, or a police-officer not below the rank of Inspector, specially authorised in writing in this behalf by the Commissioner or a Deputy Commissioner of Police, shall have power to enter into any brothel or disorderly house or house of assignation, in which he has knowledge or suspicion, or has reason to believe from a report made to him that a girl, apparently under the age of sixteen years, is living or is carrying on, or is being made to carry on, the business of a prostitute, and shall be entitled to remove such girl forthwith from such brothel, disorderly house or house of assignation.

(*2*) A girl who has been so removed shall be brought before a Juvenile Court constituted under section 37 of the Bengal Children Act, 1922, and the Court shall cause an inquiry to be made in the manner provided in sub-section (*3*) of section 27 of that Act and, if satisfied that the girl is under sixteen years of age and that she should be dealt with as hereinafter provided, may make an order that such girl be placed in suitable custody in the prescribed manner until she attains the age of eighteen years or for any shorter period. Ben. Act II 1922.

(*3*) For the determination whether a girl produced before a Court under the provisions of this section is under sixteen years of age, the provisions of section 38 of the Bengal Children Act, 1922, shall apply.

Intermediate custody of girl removed from brothels, etc.

5. When a girl has been removed from a brothel or disorderly house or house of assignation under the provisions of sub-section (*1*) of section 4, the Commissioner or Deputy Commissioner of Police or other police officer carrying out the removal shall, until such girl can be brought before the Court, and until the Court makes an order under sub-section (*2*) of section 4 or otherwise disposes of the case, cause her to be detained in such place (other than a police-station or jail) as may be prescribed in this behalf by the Local Government.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2341L., dated Darjeeling, the 15th September, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the local Legislature of Bengal having been assented to by the Governor-General on the 12th September, 1923, is hereby published for general information :—

BENGAL ACT IX OF 1923.

THE CALCUTTA IMPROVEMENT (AMENDMENT) ACT, 1923.

An Act further to amend the Calcutta Improvement Act, 1911.

WHEREAS it is expedient further to amend the Calcutta Improvement Act, 1911, in the manner hereinafter appearing ; Ben. Act V of 1911.

And whereas the previous sanction of the Governor General has been obtained, under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act : 5 & 6, Geo V, c 61 ; 6 & 7, Geo. V, c. 37 ; 9 & 10, Geo. V, c 101.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Calcutta Improvement (Amendment) Act, 1923.

New section substituted for section 54 of Bengal Act V of 1911.

2. For section 54 of the Calcutta Improvement Act, 1911 (hereinafter referred to as the said Act), the following shall be substituted, namely :—

Transfer to Board, for purposes of improvement scheme, of building or land vested in the Corporation or in the Commissioners of a Municipality.

"54. (*1*) Whenever any building, or any street, square, or other land, or any part thereof, which—

(*a*) is situated in the Calcutta Municipality and is vested in the Corporation, or

(*b*) is situated in any part of any Municipality constituted under the Bengal Municipal Act, 1884, in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

is within the area of any improvement scheme and is required for the purposes of such scheme, the Board shall give notice accordingly to the Chairman of the Corporation or the Chairman of such Municipality, as the case may be, and such building, street, square, other land or part, shall thereupon vest in the Board subject in the case of any building or any land, not being a street or square, to the payment of compensation, if any, to the Corporation or to such Commissioners, as the case may be, under sub-section (*3*).

(*2*) Where any land vests in the Board under the provisions of sub-section (*1*) and the Board make a declaration to the Corporation that such land will be retained by the Board only until it revests in the Corporation as part of a street or an open space, under a declaration made by the Corporation under sub-section (*1*) of section 65 or a resolution passed by the Board under sub-section (*2*) of section 65, as the case may be, no compensation shall be payable by the Board to the Corporation in respect of that land.

(*3*) Where any land or building vests in the Board under sub-section (*1*) and no declaration is made by the Board that the land will be so retained, the Board shall pay to the Corporation, or to the

(*Section 3.*)

shall be borrowed in the said year for the said purposes shall be determined, in the manner set forth in sections 3 to 5.

Preparation of Budget Estimate and reference to General Committee.

3. (*1*) The Budget Estimate of income and expenditure for the year 1924-25 of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, shall be prepared, with reference to the area specified in Schedule I to that Act and for the purposes of that Act, by the Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and the said Chairman shall, on or before the tenth day of January, 1924, place the same, together with a statement of proposals as to the taxation which it will, in his opinion, be necessary or expedient to impose under the Calcutta Municipal Act, 1923, in the year 1924-25, before the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, at a special meeting convened for the purpose, and the Corporation of Calcutta, as so constituted, shall forthwith refer the said Budget Estimate and proposals for consideration to a Special Committee which shall consist of the following members:—

Ben. Act III of 1923

Ben. Act III of 1899.

(*i*) the Chairman of the Calcutta Corporation;

(*ii*) nine Commissioners of the Calcutta Corporation to be elected by the Corporation at the said special meeting from among the ward Commissioners;

(*iii*) four Commissioners of the Calcutta Corporation to be elected by the Corporation at the said special meeting from among the appointed Commissioners;

(*iv*) four Commissioners of the Cossipore-Chitpur Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924;

(*v*) three Commissioners of the Maniktala Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924; and

(*vi*) two Commissioners of the Garden Reach Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924:

Provided that, if the Commissioners of any of the municipalities referred to in clauses (*iv*), (*v*) and (*vi*) fail to elect the full number of members to be elected by them by the first day of January, 1924, the Local Government shall nominate a sufficient number of persons to complete the said number and such persons shall be deemed to be members duly elected by the said Commissioners.

(*2*) The names of the members of the Special Committee shall be published in the *Calcutta Gazette*.

(*Sections 6-8.*)

Power to Chairman to inspect and take extracts from documents.

6. The Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and any officer of the said Corporation specially empowered by him in this behalf shall from the commencement of this Act and notwithstanding anything contained in the Bengal Municipal Act, 1884, have power to inspect and take extracts from the assessment books and other records of the Maniktala, Cossipore-Chitpur, Garden Reach and Tollygunge Municipalities for all or any of the purposes of this Act and of the Calcutta Municipal Act, 1923, and the Commissioners of the said municipalities shall render to the said Chairman and to any such officer all assistance that he may require for the said purposes.

Ben Act III of 1899

Ben Act III of 1884

Ben Act III of 1923

Power to Corporation to fix lower percentage rate for the consolidated rate in respect of lands and buildings in added areas during the years 1925-26 to 1928-29

7. Notwithstanding anything contained in the Calcutta Municipal Act, 1923, the Corporation, in fixing the rate at which the consolidated rate for any of the years 1925-26, 1926-27, 1927-28 or 1928-29 on lands and buildings in Calcutta generally shall be levied and imposed, may fix, in respect of the lands and buildings in any of the several areas referred to in sub-clauses (*i*) to (*v*) of clause (*1*) of section 3 of that Act, a rate at a lower percentage on the annual valuation than the percentage which is fixed for that year generally in respect of lands and buildings in Calcutta.

Amendment of section 20 of the Calcutta Municipal Act, 1923

8. In section 20 of the Calcutta Municipal Act, 1923,—

(*a*) in sub-clause (*a*)—

(*i*) after the word " being ", in the three places where it occurs, the words "or having been " shall be inserted ;

(*ii*) the first proviso shall be omitted ;

(*iii*) for the second proviso the following shall be substituted, namely :—

"Provided that such payment has been made during and in respect of the year (or any portion of the year) last preceding the year in which the election is held."

(*b*) for sub-clause (*b*) the following shall be substituted, namely :—

"(*b*) being or having been the occupier of any premises valued for assessment purposes under this Act or, in the case of the first general election held under this Act, under the Calcutta Municipal Act, 1899, or of a portion of any such premises has, at any time during the year last preceding the year in which the election is held, paid rent for such occupancy for at least six months during the said year at a rate not less than twenty-five rupees per mensem, and has on application to the Executive Officer had his name entered in a Register to be maintained for the purpose :

Provided that the application to the Executive Officer shall be made not later than the 30th September immediately preceding the election or such other date as the Executive Officer may notify in this behalf [illegible]."

(*Section 2.*)

(*b*) all the lands held in the same village under the same landlord by the raiyat which the raiyat, or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy rights therein, or

(*c*) both.

(*3*) Subject to the provisions of sub-section (*2*), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more raiyats under him and a joint application may be made by two or more raiyats in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(*4*) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Local Government.

(*5*) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (*4*) to receive applications.

(*6*) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord of the raiyat is a temporary tenure-holder or *ijaradar* the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(*7*) If the application is made in respect of lands in which the raiyat has not acquired occupancy rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(*Section 2.*)

(*14*) The premium or any instalment thereof shall be recoverable as rent and if the premium or any instalment thereof is not paid by the date fixed under sub-section (*13*) for the payment of such premium or instalment the landlord may make a requisition to the Collector for the recovery of the arrear of the same in the manner set forth in sub-sections (*3*) and (*4*) of section 158A, and the provisions of sub-sections (*5*) to (*9*) of that section shall apply to the recovery of the said arrear by the Collector as if it were an arrear of rent, recoverable by him under the provisions of that section.

Interest shall not be payable on any instalment in respect of which default has not been made.

The Local Government may make rules prescribing the form of requisition to be made by a landlord under this sub-section and for carrying into effect the purposes of this sub-section.

(*15*) Any order made under this section shall be subject to appeal in the manner provided in section 109A, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(*16*) An application made under sub-section (*1*) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (*7*) or sub-section (*8*) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (*2*) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(*17*) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

"180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy raiyat from the date of the order.

(*Sections 3-5.*)

(*g*) the following persons, of either sex, being members of the Church of England, namely :—

(*i*) one person to be nominated by the Governor General of India;

(*ii*) two persons to be nominated by the Governor of Fort William in Bengal;

(*iii*) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta;

(*iv*) two persons to be nominated by the vestry of St. John's Church, Calcutta; and

(*v*) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore.

(*2*) The Governors may at a meeting co-opt with themselves such persons, of either sex, not exceeding three in number, as they may consider necessary. Such persons shall be deemed to be Governors for the purposes of this Act.

(*3*) If any of the bodies referred to in clauses (*d*), (*e*) and (*f*) and sub-clauses (*iii*) to (*v*) of clause (*g*) of sub-section (*1*) does not by such date as may be prescribed by the Local Government nominate the Governors mentioned therein, the Local Government shall nominate qualified persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

(*4*) The names of the nominated and co-opted Governors shall be published in the *Calcutta Gazette*.

Incorporation of the Governors.

3. The Governors shall be a body corporate by the name of the "Governors of St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Period of office of the Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the *Calcutta Gazette:*

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the *Calcutta Gazette:*

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

Quorum.

5. (*1*) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

(*2*) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

(*Section 15.*)

RULES.

Power to Governors to make rules.

15. The Governors may from time to time make rules for any of the following purposes, namely:—

(*a*) for their own guidance and for the conduct of their business;

(*b*) to determine the persons by whom orders for payment of money, contracts, transfers and other documents may be signed on behalf of the Governors;

(*c*) for the management and control of the school in all its departments, including any hostel that may be established in connection with the school;

(*d*) regulating the proceedings of sub-committees;

(*e*) prescribing the rates and the conditions under which contributions may be paid by the Governors and their officers, teachers and servants to the provident fund or funds which may be established under section 14, and determining the conditions of payments from such fund or funds.

REPORT OF THE COMMITTEE APPOINTED TO CONSIDER THE AMENDMENT OF THE BENGAL TENANCY ACT.

IN a Resolution passed on the 7th July, 1921, the Bengal Legislative Council recommended the Government to appoint a Committee consisting of officials and non-officials to consider and report what amendments are needed in the Bengal Tenancy Act. Orders appointing our Committee were issued in Government Resolution No. 7383 L.R., dated the [illegible] August, 1921.

2. Our task has proved heavy and onerous. The Bengal Tenancy Act was passed in 1885, and the discussions which led up to it are now nearly forty years old. During the last generation great changes have occurred in the economic and agrarian conditions of Bengal. There has been a vast amount of litigation and some conflict of judicial decisions in regard to many of the fundamental provisions of the Act. Moreover, during the last twenty years, a cadastral survey has been made and a record-of-rights prepared for an area covering nearly two-thirds of the Presidency as now constituted, and these operations have brought to light many defects in the working of the Act and have indicated that it is in many respects unsuited to modern conditions. It is no wonder, therefore, that there has, for some time past, been a growing conviction in the minds of the Government and of the public that a radical revision of the Act is required. It has been our task to undertake that revision. We have held no less than 43 meetings during the last year, and have discussed in detail practically all the important sections of the Act. We have not been able to reach complete unanimity in our conclusions, and, in a matter affecting such diverse and complicated interests, unanimity is hardly to be expected. We are, however, agreed on most of the broad principles, which should govern a revision of the Act, and, where we differ as to the details arising out of the application of these principles, we have endeavoured to indicate the various considerations on either side, with the object of lightening the labours of the Government and of the Legislature, with whom the ultimate decision must rest.

3. We desire to make it clear at the outset that the difficulties of the problem are not due in any considerable measure to the existence in Bengal of disturbed agrarian relations or of bad feeling between landlord and tenant. Such questions, which were so prominent in the discussions of earlier tenancy legislation, are now relatively unimportant, but, while our task has been lightened by the absence of unpleasant and unprofitable controversy, it has been sufficiently formidable in other respects. The main defect of the Bengal Tenancy Act at the present day is that it does not provide adequately for the extraordinarily complicated state of agrarian relations which has grown up owing to the widespread adoption both by landlords and by tenants of the practice of subdivision and subinfeudation of rights in land. The most difficult part of our labours has been to adapt the law to meet this state of things. We are conscious that our proposals may be criticised on the ground that they will make the law unduly complicated, but the situation with which we have had to deal is complicated in the extreme, and there is no way of meeting it which is not complicated, short of forbidding subinfeudation and subdivision of tenures and holdings altogether—a measure which it would be impracticable to enforce without wholesale disturbance of existing rights.

4. The essential feature of tenancy legislation in Bengal has always been the recognition of a right of occupancy in certain classes of tenants, that is, broadly speaking, a heritable right to hold land subject to the payment of rent, accompanied by protection from ejectment so long as the conditions of the tenancy are fulfilled. The regulations passed in connection with, and subsequent to, the Permanent Settlement recognised the existence of this right in the resident raiyats of the village, who were generally known as

the landlord's consent and without any proof of usage being put forward. We agree therefore with the High Court as to the necessity for positive legislation, but [illegible] solution of the problem is possible which will be entirely [illegible]. It is desirable that the law on the subject should [illegible], but unfortunately the problem is far from simple. It has [illegible] of complexity, because the practice has been left [illegible] for more than half a century. Any attempt to [illegible] and direct methods must necessarily interfere with [illegible] to some extent, but the longer the matter is left [illegible] complicated it will become, and it is necessary to [illegible] tenants to submit to some modification of their existing or [illegible] in return for the great advantage of having the matter put on a [illegible] definite basis.

8. The pressing importance of the question is shown by the fact that the number of transfers of occupancy holdings effected by registered deed has risen from 48,000 in 1884 to over 2,50,000 in 1913, and with the growing pressure of the population on the soil, leading to an ever-increasing demand for land and an ever-growing rise in the value of land, transfers are certain to increase in number, whatever the law on the subject may be. It is an established fact that occupancy rights are at present freely transferred without reference to and without the knowledge of the landlord. In most cases, the transferee secures recognition by going to the landlord either immediately after the sale or at some later period and paying him a *salami* and the arrears of rent due from the old tenant. In some cases, the landlord is unwilling for some reason or other to accept the transferee as his tenant, and the result is litigation on a question to which no positive law can be applied. We are convinced that, as matters stand, the only remedy is to recognise the existing widespread practice of transfer, and to admit the transferability of occupancy holdings subject to the safeguards necessary to protect the interests of the landlords and to secure the general welfare of the agricultural community. Apart from the question of the transfer fee, the landlord is entitled to object to an undesirable person being forced on him as a tenant, while it is clearly not in the interests of the agricultural community that occupancy holdings should be bought up by money-lenders and non-agriculturists and settled on a rack rent with cultivating tenants who would be mere tenants-at-will. Our proposal to give a limited occupancy right to all under-raiyats of whatever grade will, to a considerable extent, avoid the latter evil, but it is more difficult to meet the reasonable demands of the landlords. Any provision enabling the landlords to sue for the ejectment of a transferee whom they considered undesirable might lead to an enormous crop of litigation, and it would be difficult to define the grounds on which such suits should be brought. It is most desirable that these transfer transactions should, as far as possible, be settled by the parties themselves without reference to the Courts, and on the whole we think that the best method of enabling the landlord to get rid of a transferee whom he considers undesirable will be to give the landlord a right of pre-emption or rather of subsequent purchase from the transferee to be exercised within a reasonable time after the transfer is brought to his notice.

9. Our proposals for dealing with the whole question are contained in clause [illegible] of the draft Bill. Briefly, we provide that all transfers by private sale shall be made by registered instrument, and that the registering officer shall immediately cause a notice of the transfer to be served upon the landlord. The transferee is required within two months to tender payment to the landlord of the transfer fee, which may be deposited [illegible] applicable to the deposit of rent and will be [illegible]. Except where the transfer [illegible] to a [illegible] reasonable objection to [illegible] as his tenant [illegible] or a co-sharer in the holding, the landlord may within [illegible] of the notice of the transfer have the holding transferred to himself on payment to the transferee of the consideration money with 10 per cent. as compensation, together with any sum which

PRELIMINARY DRAFT OF A BENGAL TENANCY (AMENDMENT) BILL.

CONTENTS.

CLAUSE.

45. Repeal of section 73 of Act VIII of 1885.

46. Amendment of section 74 of Act VIII of 1885.

47. Amendment of sections 76 and 79 of Act VIII of 1885.

48. Amendment of section 76 of Act VIII of 1885.

49. Amendment of section 77 of Act VIII of 1885.

50. Amendment of section 78 of Act VIII of 1885.

51. Amendment of section 80 of Act VIII of 1885.

52. Amendment of sections 82, 83, 86 and 87 of Act VIII of 1885.

53. Amendment of section 82 of Act VIII of 1885.

54. Amendment of section 85 of Act VIII of 1885.

55. Insertion of new section 86A in Act VIII of 1885—

86A. Effect of exemption from payment of rent or abatement of rent on account of diluvion.

56. Amendment of section 87 of Act VIII of 1885.

57. Insertion of new section 87A in Act VIII of 1885—

87A. Power to sub-lessee to take interest of sub-lessor on surrender and abandonment.

58. Amendment of section 88 of Act VIII of 1885.

59. Insertion of new sections 88A and 88B in Act VIII of 1885—

88A. Safeguard to other co-sharer landlords against limitation of interest by a co-sharer landlord.

88B. Safeguard to other co-sharer tenants against action of a co-sharer tenant rendering them liable to penalty.

60. Amendment of section 93 of Act VIII of 1885.

61. Amendment of section 95 of Act VIII of 1885.

61A. Amendment of section 96 of Act VIII of 1885.

62. Amendment of section 98 of Act VIII of 1885.

(*iii*) clause (*10*), as inserted by section 4 (*2*) of the Bengal Tenancy (Amendment) Act, 1907, and as so modified, shall be substituted for clause (*10*) as inserted by section 4 (*2*) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and

(*g*) for clause (*11*) the following shall be substituted, namely :—

"(*11*) 'Agricultural year' means the Bengali year commencing on the first day of Baisakh :

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 192 , any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of Baisakh next following the date of the commencement of that Act."

Substitution of new section for section 4 of Act VIII of 1885.

6. For section 4 of the said Act the following shall be substituted, namely :—

"4. There shall be, for the purposes of this Act, the following classes of tenants, namely :—

Classes of tenants

(*i*) tenure-holders including—

(*a*) permanent tenure-holders, which expression means tenure-holders and under-tenure-holders holding a tenure which is heritable and which is not held for a limited time ;

(*b*) temporary tenure-holders, which expression means tenure-holders and under-tenure-holders holding for a limited time ;

(*ii*) raiyats including—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity, whether such raiyats are or are not occupancy raiyats ;

(*b*) occupancy raiyats, that is to say, raiyats having a right of occupancy in the land held by them, whether or not such raiyats hold at fixed rates ;

(*c*) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy, whether or not such raiyats hold at fixed rates ; and

(*iii*) under-raiyats including—

(*a*) occupancy under-raiyats, that is to say, under-raiyats having a right of occupancy in the land held by them ;

(*b*) non-occupancy under-raiyats, that is to say, under-raiyats not having such a right of occupancy."

"14. (*1*) When a permanent tenure is transferred by sale, exchange (other than partition), gift or usufructuary mortgage or by succession, a fee of the following amount (hereinafter called "the landlord's fee") shall be payable to the landlord, namely :—

Payment of landlord's fee on transfer of permanent tenure

(*a*) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure, provided that no such fee shall be less than one rupee or more than one hundred rupees ; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

(*2*) The transferee shall, within two months of the date on which the registration is complete or within six months of the date on which the succession takes place, as the case may be, tender payment of the landlord's fee to the landlord or his common agent, if any, and the provisions of this Act relating to the tender and deposit in Court of an arrear of rent shall apply to the tender and deposit in Court of the landlord's fee, and such fee shall be recoverable as an arrear of rent :

Provided that—

(*a*) in the case of the transfer of a share, that share alone may be sold in execution of a decree for realization of the landlord's fee ;

(*b*) in no case shall a tenure or share be sold without due notice to the transferor.

"15. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when a mortgage of a permanent tenure other than a usufructuary mortgage thereof is foreclosed, the Court shall, before confirming the sale under rule 92 in Order XXI in Schedule I to the Code of Civil Procedure, 1908, or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to pay into Court the landlord's fee prescribed by section 14, together with costs necessary for its transmission to the landlord and such further fee as may be prescribed for service on the landlord of notice of the sale or final foreclosure.

Transfer of permanent tenure by sale in execution of a decree other than a decree for rent.

(*2*) When the sale has been confirmed or when a decree or order absolute for the foreclosure has been made, the Court shall send to the landlord or to his common agent, if any, the landlord's fee and a notice of the sale or final foreclosure in the prescribed form and manner."

was a non-occupancy under-raiyat of the village, he shall become a non-occupancy raiyat in respect of such lands, and the rent thereafter payable by such person as raiyat shall in either case be the rent that was payable by him as under-raiyat, subject to the provisions contained in this Act as to the enhancement and reduction of the rent of occupancy or non-occupancy raiyats, as the case may be.

(4) If there is any incumbrance on the lands of the former raiyati holding, such incumbrance, unless it is annulled in proceedings under Chapter XIV, shall thereafter be deemed to be an incumbrance on the interest of the landlord, as proprietor or permanent tenure-holder, which continues under sub-section (1) or accrues under sub-section (2) in respect of such lands.

(5) If the right of an occupancy under-raiyat and his immediate landlord becomes united in the same person by transfer, succession or in any other way whatsoever, or if an occupancy under-raiyat becomes an occupancy raiyat under the provisions of sub-section (4), the right of the occupancy under-raiyat, as such, shall be extinguished, and any incumbrance on the holding of such occupancy under-raiyat shall, unless it is annulled under the provisions of Chapter XIV, attach to the interest of the said immediate landlord or to the interest of the said occupancy raiyat, as the case may be.

Any immediate under-raiyat of such occupancy under-raiyat shall, unless his interest is annulled under the provisions of Chapter XIV, hold as under-raiyat under the said immediate landlord, or the said occupancy raiyat, as the case may be, and shall, subject to the provisions of this Act as to the enhancement and reduction of such rent, pay to such immediate landlord or to such occupancy raiyat, as the case may be, the rent that was payable by him to his former landlord immediately before the extinguishment of the interest of that landlord.

(6) Nothing contained in this section shall affect—

(i) the rights of a landlord who purchases a holding at a sale in execution of a decree for arrears of rent to annul incumbrances on such holding in the manner provided in Chapter XIV;

(ii) the rights of purchase conferred on co-sharer immediate landlords by section 26G, where the entire raiyati or under-raiyati interest in an occupancy holding has been acquired by another co-sharer immediate landlord of the same;

(iii) any right of ejectment which may be exercised by a landlord under section 26H.

Landlord's fee for transfer.

26D. The transferee shall, except in the case of the transfer of a rent-free holding or of a transfer by bequest in favour of a natural heir, within two months of the date on which the notice is presented to the registering officer or to the Civil Court, as the case may be, tender payment to the landlord or his common agent, if any, of a fee which shall amount—

(*a*) in the case of the sale of a holding or portion or share of a holding, in respect of which a produce rent is payable in whole or in part, to 25 per cent. of the consideration money ;

(*b*) in the case of the sale of a holding or portion or share of a holding, in respect of which a money rent is payable, to 25 per cent. of the consideration money or to six times the annual rent of the holding or of the transferred portion or share thereof, whichever is greater ;

(*c*) in the case of a transfer by exchange, gift or bequest, to six times the annual rent of the holding, or of the transferred portion or share :

Provided that—

(*i*) in the case of a transfer of a holding or portion or share thereof by exchange, gift or bequest ; and

(*ii*) in the case of the transfer, other than a sale in execution of a decree, of a portion or share of a holding, if the division of the holding or distribution of the rent payable in respect thereof has not been made with the express consent of the landlord or of his agent duly authorized in that behalf,

the landlord may within two months of the receipt of the notice of transfer apply to the lowest Civil Court having jurisdiction to entertain a suit for rent of the holding to fix the market value of the holding or of the transferred portion or share, and the landlord's fee shall amount to 25 per cent. of such market value :

Tender, recovery and deposit of landlord's fee.

"26E. The provisions of this Act relating to the deposit in Court and tender of an arrear of rent shall apply to the deposit in Court and tender of a landlord's fee payable under section 26D, and such fee may be recovered by the landlord as an arrear of rent, together with interest or damages :

Provided that—

(*a*) in the case of the transfer of a share that share alone may be sold in execution of a decree for realization of the fee ;

Provided that, if the entire body of immediate landlords do not apply to the Court in accordance with the provisions of sub-section (*1*), such proportion of the co-sharer immediate landlords as have an aggregate of interests in the lands of the holding not less than one-half of the entire interest of all the co-sharer immediate landlords therein may apply to the Court in accordance with the provisions of that sub-section, and in that case such proportion of co-sharers shall for all the purposes of this section be deemed to be the immediate landlord to the exclusion of those co-sharers who do not so apply and without any further power of purchase under this section to any co-sharer landlord:

Provided also that when application has been made under sub-section (*1*) by co-sharer immediate landlords in accordance with the first proviso to this sub-section, any of the remaining co-sharer immediate landlords, including the transferee, if one of them, may within the period of two months referred to in sub-section (*1*) apply to join in the application of the co-sharer immediate landlords aforesaid. Such application shall be granted if at the time of making the application or within such period as the Court may fix [not extending beyond the period of two months referred to in sub-section (*1*)] the co-sharer landlord applying under this proviso deposits in Court, for payment to the co-sharer landlords by whom the deposit has been or is to be made, such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (*1*).

"26 H. Where a landlord acquires a holding or a share or portion thereof under the provisions of section 26G, he shall be entitled, notwithstanding anything contained elsewhere in this Act, to bring a suit, within one year of the date on which he acquired the holding, portion or share, as the case may be, for the ejectment of any under-raiyat holding land within such holding, if—

Ejectment by landlord of certain under-raiyats after purchase of holding under section 26G.

(*i*) the tenancy of such under-raiyat or his predecessor in interest was created after the thirty-first day of December, 1914, and

(*ii*) the transferee from whom the landlord has purchased under that section, or the predecessor in interest of such transferee, was the sole immediate landlord of such under-raiyat in respect of such land:

Provided that, where the under-raiyat or any of his predecessors in interest held such lands before the first day of January, 1915, as an immediate under-raiyat under a predecessor in interest of the transferee, the

Substitution of new section for section 40 of Act VIII of 1885.

25. For section 40 of the said Act the following shall be substituted, namely:—

"40. (*1*) When a raiyat or an under-raiyat having occupancy rights in a holding pays for the holding rent in kind or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, either the tenant or the landlord may apply to have the rent commuted to a money rent.

Commutation.

(*2*) The application may be made to the Collector or to a Sub-divisional Officer or to a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(*3*) A case for commutation may be determined by the officer who receives the application, or by some other officer competent under sub-section (*2*) to receive applications for commutation, to whom the case is transferred by him.

(*4*) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for determination of the case.

(*5*) If the application is opposed, the said officer shall decide whether in all the circumstances of the case it is reasonable to grant it, and, in particular, he shall have regard to the following circumstances:—

(*a*) whether the rent in kind is mainly required for the subsistence of the landlord and his household, and not for purposes of trade;

(*b*) in the case of land held under trust or other legal obligation for a religious or charitable purpose, whether the rent in kind is required for consumption by, or for the subsistence of, the beneficiaries of the endowment, or for the due performance of worship;

(*c*) whether the landlord of the applicant pays in kind or otherwise as specified in sub-section (*1*) his rent for the tenure or holding;

(*d*) whether the tenant receives in respect of any portion of the land rent in kind or otherwise as specified in sub-section (*1*) from a sub-lessee;

(*e*) if the land is in an area under reclamation, whether it would be inequitable to fix a money rent in the conditions prevailing at the time when the application is made.

Substitution of new section for section 48 of Act VIII of 1885

28. For section 48 of the said Act the following shall be substituted, namely:—

"48. All under-raiyats, other than under-raiyats holding only by reason of a temporary lease for a term not exceeding nine years granted by or on behalf of a raiyat or under-raiyat, who is disabled by age, sex, disease, accident or temporary absence from home from cultivating his land by himself or by members of his family or by hired servants or with the aid of partners, shall be occupancy under-raiyats.

Occupancy under-raiyats.

Provided that under-raiyats who have been holding under a temporary lease for a term not exceeding nine years granted by or on behalf of persons of the classes referred to above shall not become occupancy under-raiyats on the expiry of the lease—

(i) if they are sued for ejectment within one year of the date of expiry of the lease and ejected by means of such suit,

(ii) if they surrender the land voluntarily within one year of the expiry of the lease, or

(iii) if during the currency of the lease or within one year of its expiry they take a new lease which fulfils the conditions set forth in this section and is granted by a person of the classes referred to above.

Explanation.

An under-raiyat who has become an occupancy under-raiyat in respect of any land shall thereafter for the purposes of this section be deemed to hold such land in virtue of his occupancy right therein and not only by reason of any lease which may thereafter be granted by a person of the classes referred to above.

Illustrations.

1. A, an under-raiyat, holds under a lease given for nine years by B, a disabled person. B dies and his holding is inherited by C, who is not disabled. A continues to be a non-occupancy under-raiyat under C till the expiry of the lease, but if C does not sue A for ejectment within one year of the date of expiry of the lease, A becomes an occupancy under-raiyat under C.

2. A has become an occupancy under-raiyat under C, who is not a disabled person. C sells his interest to D, a disabled person. A continues to be an occupancy under-raiyat under D notwithstanding any lease granted by D to him."

Insertion of new section 48A in Act VIII of 1885.

29. After section 48 of the said Act the following section shall be added, namely:—

"48A. (1) An occupancy under-raiyat shall have as against his immediate landlord all the rights and liabilities of a raiyat with occupancy rights as set forth in

Rights and liabilities of occupancy under-raiyats.

(2) The year and instalment to which a payment is credited under section 55 shall be clearly specified in the statement of account furnished to the tenant under sub-section (1).

(3) The landlord shall prepare and retain a copy of the statement giving the same particulars."

Amendment of section 58 of Act VIII of 1885.

35. In section 58 of the said Act—

(a) for sub-section (2) the following shall be substituted, namely:—

"(2) if after the expiry of two months from the date of the demand made under section 57 a landlord, without reasonable cause, refuses or neglects to deliver the statement of account prescribed in section 57 for that year to a tenant demanding the same, the tenant may, within six months of the demand, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the account should have been delivered;"

(b) in sub-section (1) for the words "one year" the words "two years" shall be substituted;

(c) after sub-section (8) the following shall be added, namely:—

"(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall in no case be considered a reasonable cause for not tendering a receipt for any instalment actually paid, or for failure to furnish the statement of account prescribed in section 57, and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable excuse for not retaining a counterfoil fully filled up."

Amendment of section 61 of Act VIII of 1885.

36. In section 61 of the said Act for the words "the full amount of the money then due" at the end of sub-section (1), the words "a sum not less than the amount of the money then due" shall be substituted, and in sub-section (2) after the words "the deposit is to be entered" the words "and the name of his common agent, if any," shall be inserted.

(*b*) to clause (*a*) of sub-section (*2*) the words "or for the purpose of providing drinking water for the tenant or his family" shall be added;

(*c*) in clause (*f*) of sub-section (*2*) after the words "the raiyat" the words "or under-raiyat" shall be inserted; and

(*d*) in sub-section (*3*) after the word "raiyat" the words "or under-raiyat" shall be inserted.

Amendment of section 77 of Act VIII of 1885.

49. In section 77 of the said Act—

(*a*) in sub-section (*1*) for the words "or has an occupancy right in his holding, neither the raiyat" the words "or where a raiyat or an under-raiyat has an occupancy right in his holding, neither the tenant" shall be substituted:

(*b*) in sub-section (*2*) for the words "the raiyat," in the two places where they occur, the words "the tenant" shall be substituted; and

(*c*) after sub-section (*2*) the following shall be added, namely:—

"(*3*) Any fee realized from a tenant for permission to make any improvement shall be deemed to be an *abwab* and the provisions of sub-section (*1*) of section 74 shall apply thereto."

Amendment of section 78 of Act VIII of 1885.

50. In section 78 of the said Act for the words "the raiyat" the words "the tenant" shall be substituted.

Amendment of section 80 of Act VIII of 1885.

51. To section 80 of the said Act the following shall be added, namely:—

"Provided that the immediate landlord of an occupancy under-raiyat may apply for the registration of an improvement made in accordance with the provisions of sub-section (*1*)—

(*i*) in the case of improvements made before the day of , 192 , within twelve months from that date,

(*ii*) in the case of improvements made after that date, within twelve months from the date of the completion of the work."

Amendment of sections 82, 83, 86 and 87 of Act VIII of 1885.

52. In sections 82, 83, 86 and 87 of the said Act after the word "raiyat," wherever it occurs, the words "or under-raiyat" shall be inserted.

Amendment of section 82 of Act VIII of 1885.

53. In sub-section (*4*) of section 82 of the said Act after the words "commencement of this Act," the words "and improvements made by an occupancy under-raiyat between the first day of November, 1923, and the day of , 192 " shall be inserted.

(4) If, within the period allowed by sub-section (1), no application is made to the landlord in accordance with the provisions of that sub-section, or if the premium, if any, payable under that sub-section is not paid or deposited in Court within that period or within one month of the date of election by the landlord under sub-section (1), whichever is later, the landlord may, subject in the case of abandonment to the provisions of sub-section (3) of section 87, avoid the sub-lease or sub-leases and may enter on the holding and let it to another tenant or take it into cultivation himself."

Amendment of section 88 of Act VIII of 1885.

58. Section 88 of the said Act, as modified by section 18 of the Bengal Tenancy (Amendment) Act, 1907, shall be substituted for section 88, as first enacted.

Insertion of new sections 88A and 88B in Act VIII of 1885.

59. After section 88 of the said Act the following shall be inserted, namely:—

Safeguard to other co-sharer landlords against limitation of interest by a co-sharer landlord.

"88A. If any co-sharer landlord limits by contract his rights as landlord in respect of his share in a holding of which he is co-sharer landlord, such holding not having been divided in accordance with the provisions of section 88, the contract shall be void as against the other co-sharer landlords or any of them, and the lands in respect of which such contract is made shall not be deemed to form the subject of a separate tenancy by virtue of such contract to the prejudice of any such other landlords.

Illustration.

A and B are co-sharer landlords, each holding a half share in respect of a tenure. A and B jointly settle a holding with X, a raiyat. B later grants to X *mukarari* rights in respect of B's 8 annas' interest as landlord in the lands of the holding without the written consent of A. A, acting under the provisions of section 188, may sue X for enhancement of the rent of the holding on the basis of the former settlement, disregarding the subsequent grant of *mukarari* rights by B, and will get the benefit of such enhancement, if any, to the extent of half of the increased amount of the new rent over the old rent of the holding. B, being estopped by his contract, cannot take his share of the relief.

Safeguard to other co-sharer tenants against action of a co-sharer tenant rendering them liable to penalty.

"88B. If any co-sharer tenant in a tenure or holding, which has not been sub-divided in accordance with the provisions of section 88, without the written consent of all the co-sharer tenants or of their agent, duly authorized in this behalf, and not being the representative of all of them in respect of the contract or permission, grants to any

(ii) during any period in respect of which it is proved that a receipt has been granted on which the name and address of the common agent have not been entered.

(4) If the co-sharer landlords are unable to agree as to the common agent to be appointed, or fail to appoint him within the period fixed by sub-section (1), any of them may apply to the Collector to appoint on behalf of the landlords a common agent and, after giving to the landlords an opportunity to show cause the Collector may appoint a common agent, and such common agent shall be deemed to have been appointed by all such landlords.

(5) When a common agent is appointed under this section, or at any time after such appointment the landlords may authorize the common agent to receive rents on their behalf, and the fact that he is so authorized shall thereafter be noted against the name of the common agent on all the rent receipts given on behalf of such landlord in respect of tenancies within the area for which he is appointed, and if such note is not so made, the provisions of sub-section (3) shall apply in respect of the recovery by such landlord of interest damages and cost on arrears of rent and dues recoverable as such.

(6) Where a common agent has been authorized under sub-section (5) to receive rents, no application by the tenants for the appointment of a common manager on the ground specified in case (a) in section 93 shall lie.

(7) The appointment under sub-section (1) of a common agent and the authorization under sub-section (5) of a common agent to receive rents shall be made by instrument in writing and, where the rent roll of the tenancy or tenancies for that portion of the joint property for which the common agent is appointed exceeds rupees one hundred the appointment or authorization shall be made by registered instrument.'

Amendment of section 100 of Act VIII of 1885.

64. In section 100 of the said Act—

(a) for the words "High Court" the words "Board of Revenue" shall be substituted and

(b) after the words "managers" the words "and common agents" shall be inserted.

Amendment of section 101 of Act VIII of 1885.

65. In clause (c) of sub-section (2) of section 101 of the said Act for the words "District Judge" the word "Collector" shall be substituted.

Amendment of section 102 of Act VIII of 1885.

66. In clause (b) of section 102 of the said Act after the word "class" the words "or classes" shall be inserted, and for the words "or under-raiyat" the comma and words ", occupancy under raiyat or non-occupancy under-raiyat" shall be substituted.

(2) The said sub-section 109C, as so modified, shall also be inserted after section 109B of the said Act, as inserted by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

Amendment of section 107 of Act VIII of 1885 and substitution of new section 109D for sections 109C and 109D of Act VIII of 1885.

79. For sub-section (2) of section 107 of the said Act, as inserted by section 28(b) of the Bengal Tenancy (Amendment) Act, 1907, and section 109D, as inserted by section 33 of the same Act, and for sub-section (2) of section 107, as inserted by section 28(b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and section 109C, as inserted by section 33 of the same Act, the following shall be substituted, namely :—

Note of decisions on record.

"109D. A note of all rents commuted under section 40 in the course of proceedings under this Chapter, of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C shall be made in, or appended to, the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record."

Amendment of section 110 of Act VIII of 1885.

80. In section 110 of the said Act for the words "settlement rent-roll" the words "record-of-rights" shall be substituted.

Amendment of section 111B of Act VIII of 1885.

81. (1) In sub-sections (1) and (4) of section 111B of the said Act, as inserted by section 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words "three months" the words "four months" shall be substituted.

(2) The said section 111B as so modified shall be substituted for section 111B of the said Act, as inserted by section 35 of the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 112 of Act VIII of 1885.

82. In section 112 of the said Act—

(1) In sub-section (1), for the portion commencing with the words "or that any landlord is demanding," and ending with the words "a Revenue-officer," as inserted by section 36 (1) of the Bengal Tenancy (Amendment) Act, 1907, the corresponding portion, as inserted by section 36 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted ; and

(2) After sub-section (2a) as inserted by section 36(2) of the Bengal Tenancy (Amendment) Act, 1907, and after sub-section (2a), as inserted by section 36 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be added, namely :—

"(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when

in the holding should have been, but have not been, made parties defendant to the suit, and that the portion or share of the holding held by those persons comprises more than one-fourth of the entire interest of the whole body of co-tenants therein, the decree for rent and sale in execution of that decree shall have the effect of a decree in a suit for money and of a sale in execution of a decree in such a suit, and shall be binding only on those co-tenants who have been made parties defendant to the suit. In the absence of such finding or proof, notwithstanding anything contained elsewhere in this Act or in any other law, the decree for rent and the sale in execution thereof shall be valid also against the holding; and, subject to the provisions of section 158B, the holding shall pass to the auction-purchaser in the manner provided in Chapter XIV:

Provided that, unless the decree has been found under this sub-section to have the effect of a decree in a suit for money, any co-tenant or co-tenants who should have been, but have not been, made parties defendant to the suit, shall be entitled to obtain from the auction-purchaser or his successors in interest, as the case may be, money compensation to the extent of their portion or share of the holding taken at its full market value. Such persons may apply to the Court by which the decree has been passed to fix the amount of compensation at any time within six months of the date of sale, or may thereafter bring a suit to obtain the compensation. An order of the Court passed on an application so made shall have the force and effect of a decree, and any co-tenants who have been awarded such compensation shall be deemed to have been duly made parties to the suit for the purpose of computing the amount of the interest in the holding held by co-tenants who have been made parties.

(4) Notwithstanding anything contained in sub-section (3), a decree for arrears of rent of a holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in manner provided in Chapter XIV, if it is proved that the defendants to the suit represented the entire body of co-sharer co-tenants in the holding, for the rent of which the suit was brought, and the provisions contained in sub-section (3) and the proviso thereto shall not apply to such decree."

Amendment of section 147 of Act VIII of 1885.

91. To section 147 the following shall be added, namely:—

"Provided that nothing contained in this section or in rule 2 in Order II in the First Schedule to the Code of Civil Procedure, 1908, shall apply to the recovery of a landlord's fee for the transfer of a tenure or holding, or shall prevent a landlord from recovering the same by separate suit".

(*i*) in clause (*f*) for the words and figures "section 189 of the Code of Civil Procedure" the words and figures "rule 13 in Order XVIII in Schedule I to the Code of Civil Procedure, 1908," shall be substituted;

(*j*) after clause (*f*) the following shall be inserted, namely:—

"(*fa*) on or before the date of hearing, the plaintiff may file an affidavit in proof of the facts stated in the plaint, and, notwithstanding anything contained in the Indian Evidence Act, 1872, the Code of Civil Procedure 1908, or in any rules made thereunder, such affidavit may be used by the Court as evidence in the suit, and further the Court may accept one affidavit for all the cases brought by one plaintiff which come up for hearing on the same day,"

(*k*) (*a*) in clause (*ff*), as inserted by section 13 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908,—

(*i*) for the words "the landlord" in the first place where they occur the words "a party" and in the second place where they occur the words "the party" shall be substituted;

(*ii*) after the words "such documents" the words "may be" and after the words "copies or extracts", the words "without the payment of any court-fee, and such copies or extracts" shall be inserted,

(*b*) the said clause, as so modified shall be substituted for clause (*ff*) as inserted by section 13 (2) of the Bengal Tenancy (Amendment) Act, 1907 and

(*l*) in clause (*h*) for the words and figures "section 232 of the Code of Civil Procedure" the words and figures "rule 16 in Order XXI in Schedule I to the Code of Civil Procedure, 1908" shall be substituted

Substitution of new section for section 148A in Act VIII of 1885.

94. For section 148A of the said Act the following shall be substituted, namely:—

Power to co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.

"148A. (*1*) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

(*2*) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in

(*b*) clauses (*a*) and (*b*) up to and including the words "fifty rupees" shall be omitted;

(*c*) after the proviso to that section the following shall be inserted, namely:—

"Provided also that a decision of a question relating to title to land made in a rent-suit, from the decree or order in which no appeal lies, shall not be deemed to bar the consideration and decision of the same question in a subsequent title-suit.".

Amendment of section 156 of Act VIII of 1885.

96. In section 156 of the said Act after the word "raiyat" wherever it occurs the words "or under-raiyat" shall be inserted.

Amendment of section 158 of Act VIII of 1885.

97. In clause (*c*) of sub-section (*1*) of section 158 of the said Act after the word "class" the words "or classes" shall be inserted and for the words "or under-raiyat" the words "occupancy under-raiyat or non-occupancy under-raiyat" shall be substituted.

Amendment of section 158A of Act VIII of 1885.

98. In section 158A of the said Act—

(*a*) in sub-section (*1*) the words "and in which such record is maintained" shall be omitted;

(*b*) in sub-section (*2*) after the words "Local Government" the words "after considering the manner in which the landlord maintains his record, and after ascertaining in such manner as it thinks fit the views of the tenants" shall be inserted.

Amendment of section 158B of Act VIII of 1885.

99. In sub-clause (*iii*) of sub-section (*1*) of section 158B of the said Act for the words "to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit" the words "in respect of a tenure or holding in manner provided in section 148A" shall be substituted.

Amendment of section 159 of Act VIII of 1885.

100. Section 159 of the said Act shall be re-numbered as sub-section (*1*) of section 159 and to that sub-section as re-numbered the following shall be added, namely:—

"(*2*) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchaser shall take with effect from the date of confirmation of the sale."

Amendment of section 160 of Act VIII of 1885.

101. (*1*) Section 160 of the said Act shall be re-numbered as section 160 (*1*)

(*2*) After that sub-section as re-numbered the following shall be added, namely:—

"(*2*) The right of a raiyat at fixed rates having a right of occupancy in the lands of a holding to continue to hold at such rates shall not be deemed to be a protected interest under sub-section (*1*), but such raiyat shall continue to hold the lands on payment of rent at the rate paid by occupancy raiyats not holding at fixed rates for land of a similar description with similar advantages in the same village, or at such other rate as may be deemed to be fair and equitable by a Court".

Amendment of section 179 of Act VIII of 1885.

110. To section 179 of the said Act the following shall be added, namely:—

"Provided that nothing contained in any contract made after the first day of November 1922, shall make it legal to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (*3*) of section 77."

Substitution of new section for section 182 of Act VIII of 1885.

111. For section 182 of the said Act the following shall be substituted, namely:—

"182. The homesteads of raiyats and under-raiyats shall be governed by the provisions of this Act applicable to their holdings:

Homesteads.

Provided that a person owning or occupying a dwelling-house or other building, or having any other interest therein but not holding land as a raiyat or under-raiyat, shall not obtain any rights under this section in the dwelling-house or building which he so owns, or occupies or in which he is so interested, or in the lands or out-buildings immediately appertaining thereto, or in the sites of such dwelling-house or out-buildings, if he subsequently acquires a right to hold land as a raiyat or under-raiyat."

Amendment of section 183 of Act VIII of 1885.

112. The illustrations to section 183 of the said Act shall be omitted.

Insertion of new Chapter XVA in Act VIII of 1885

113. After section 183 of the said Act the following shall be inserted, namely:—

"CHAPTER XVA.

Hybrid tenures.

"183A. Where a tenure-holder, himself or through his predecessors in interest, has been in continuous possession of a tenure in the district of Rangpur since the fourteenth day of March, 1885, or any date previous thereto, such tenure shall be deemed to be a permanent tenure, notwithstanding the terms of the contract by which the tenure was created, or any subsequent contract, lease or settlement of the lands within the tenure, and notwithstanding any portion of such lands having been separated from the other lands which formed with them a separate tenure, or amalgamated with other lands into one tenancy, and such tenure shall include any lands added thereto:

Special provisions for certain classes of tenancies in Rangpur and elsewhere

Provided that unless such tenure is a permanent tenure in virtue of the terms of any contract or settlement made in respect thereof—

(*i*) the provisions of sections 26A to 26H and of section 26K shall, and

(*ii*) the provisions of sections 12 to 17 shall not

apply to transfers of any such tenures except in so far as the provisions of sections 26D and 26F in regard to the amount of landlords' fee payable on transfer of any such tenure are modified by any contract subsisting on the first day of November 1922;

Amendment of section 195 of Act VIII of 1885

117. For clause (*e*) of section 195 of the said Act the following shall be substituted, namely :—

"(*e*) any enactment relating to patni-tenures in so far as it relates to those tenures, except that the expression *khudkast* raiyat or resident and hereditary cultivator in sub-section (*3*) of section 11 of the Patni Taluqs Regulation (VIII of 1819) shall be deemed to include all raiyats having a right of occupancy, or"

Formal amendments in Act VIII of 1885.

118. For the references to foregoing sections or sub-sections, where they occur in the sections set forth as items in the second column of the Table annexed to this section, the words and figures entered in the fourth column against those items shall be substituted—

TABLE.

Item No.	Section in which the change is to be made.	Words to be deleted.	Words and figures to be substituted.
1	Section 17 ...	"the foregoing sections."	"sections 12 to 16."
2	„ 21 ...	"the last foregoing section."	"section 20."
3	„ 35 ...	"the foregoing sections."	"sections 30 to 34."
4	„ 59 ...	"the foregoing sections."	"sections 56 to 58."
5	„ 62 ...	"the last foregoing section."	"section 61."
6	„ 64 ...	"the foregoing sections."	"section 62 or 63."
7	„ 70 ...	"the last foregoing section."	"section 69."
8	„ 83 ...	"the last foregoing section."	"section 82."
9	„ 86 ...	"the last foregoing sub-section."	"sub-section (6)."
10	„ 91 ...	"the last foregoing section."	"section 90."
11	„ 94 ...	"the last foregoing section."	"section 93."
12	„ 95 ...	"the last foregoing section."	"section 94."
13	„ 96 ...	"the last foregoing section."	"section 95."
14	„ 100 ...	"the foregoing sections."	"sections 95 to 99."

Re arrangement of definitions in section 3 and re-lettering of section 148 of Act VIII of 1885.

120. The definitions as set forth in section 3 of the said Act as hereby amended shall be re-arranged in alphabetical order and shall be re-numbered accordingly and the clauses of section 148 of the said Act shall be numbered from (*a*) to (*m*), and the necessary amendments consequential to such re-arrangement and re-numbering shall be made throughout the said Act.

Substitution of new Schedule for Schedule II of Act VIII of 1885.

121. For Schedule II of the said Act the following shall be substitued, namely :—

"SCHEDULE II.

Forms of Receipt and Account

FORM OF RECEIPT.

Landlord's portion.

1. Serial No. of receipt
2. Estate......Village.........Thana
3. Name of common agent, if any, { appointed under sub-section (*1*) of section 99A. authorized under sub-section (*5*) of section 99A to receive rents.
   Address
   Village Thana
4. Khatian No. of the tenancy in record-of-rights (if any)
5. Name of tenant
6. Father's name
7. Annual rent
8. Annual cess
9. Jolkar, pholkar, etc., if any
10. Total

FORM OF RECEIPT.

Tenant's portion.

1. Serial No. of receipt
2. Estate......Village.........Thana
3. Name of common agent, if any, { appointed under sub-section (*1*) of section 99A. authorized under sub-section (*5*) of section 99A to receive rents.
   Address
   Village Thana
4. Khatian No. of the tenancy in record-of-rights (if any)
5. Name of tenant
6. Father's name
7. Annual rent
8. Annual cess
9. Jolkar, pholkar, etc., if any
10. Total

[*Reverse*] [*Reverse*]

Date of payment.	Name of person through whom paid.	Year and instalment to which the payment is credited.	Rent.	Cess.	Interest.	Total.	Date of payment.	Name of person through whom paid.	Year and instalment to which the payment is credited.	Rent.	Cess.	Interest.	Total.

Signature of landlord or agent.

Signature of tenant.

Signature of landlord or agent.

Signature of tenant.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(*2*) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(*2*) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

NOTES ON CLAUSES.

Clause 3.—It is proposed to remove the references to areas outside the province and to simplify section 1 by stating definitely the areas to which the Act does not apply instead of referring to the Scheduled Districts Act.

Clause 4.—The reference to Orissa in section 2 has been omitted.

Clause 5.—(*a*) As it is proposed to treat joint and co-sharer landlords and joint and co-sharer tenants alike under the Act, a definition has been inserted to include joint and co-sharer landlords under the term co-sharer landlord, and joint and co-sharer tenants under the term co-sharer tenant.

(*b*) This sub-clause introduces in section 3 the presumption that a *bonâ fide* cultivator who is permitted to cultivate land on condition that he hands over a share of the produce is a tenant of that land. For an explanation of the necessity for this provision the main report should be read.

(*c*) The words " or deliverable " are redundant.

(*d*) In view of the general principle adopted regarding the occupancy rights of under-raiyats, the definition of holding has been extended to include that of an under-raiyat.

(*e*) This sub-clause introduces a definition of homestead, in order to make it clear that the provisions of section 182 as amended by clause 111 do not apply to shops, hotels and similar premises.

(*f*) Of the alternative definitions of village in the West Bengal and Eastern Bengal Acts, the Eastern Bengal form has been adopted with necessary modifications.

(*g*) This sub-clause defines the agricultural year as the *Bengali year*. This year is in force throughout Bengal, except in a part of *Midnapore* and in Chittagong. Unless there is a serious objection to its adoption in these areas, it is desirable to make the year uniform throughout Bengal for the purposes of the Act.

It is proposed in clause 120 to re-arrange the definitions in section 3 in alphabetical order.

Clause 6.—Section 4 has been recast so as to include the two classes of occupancy and non-occupancy under-raiyats which it is proposed to recognize. Tenure-holders have also been divided into two classes permanent and temporary.

Clause 7.—Section 5 has been modified in view of the introduction of a definite class of under-raiyats with occupancy rights.

Clause 8.—The drafting of sub-section (*3*) to section 7 has been amended, and the usual presumption that the present rent is fair and equitable has been introduced.

Clause 9.—This clause introduces a revised section 8 giving power to the Court to allow a period of ten years instead of five years, during which the rent may be gradually increased to the amount settled by the Court. It will also be open to the Court to fix the instalments as it may think best instead of being compelled to decree annual increases as under the present law.

Clause 10.—This addition has been made to section 9, in order to remove any misapprehension by the Courts as to the application of the section when there have been gradual enhancements.

Clause 11.—The object of the proposed sections 12—15 is to simplify the cumbrous procedure of the present sections of the Act in respect of the realization of landlords' fees for the transfer of permanent tenures. The lines adopted are those proposed later for the realization of the same fees for the transfer of occupancy rights.

Briefly, the proposed procedure will leave the actual payment of the landlord's fee a matter between the parties concerned, the amount being payable and recoverable as rent. At the time of the registration of the document of transfer, a notice must be filed with the registering officer for service on the landlord giving the particulars of the transfer. The result is that the Collector will have no responsibilities in the matter. For the same reason, in the case of succession, the notice will be served through the Civil Courts instead of through the Collector, and an additional penalty is provided for failure to give notice of succession within six months.

or acceptance of such statement, it is provided that the entry of area in such statement shall not be binding on the landlord or tenant in any suit or proceeding for the alteration of the rent of the tenancy. It is proposed to amend section 57 accordingly.

Clause 35.—Section 58 has been re-drafted, in order to provide penalties for withholding receipts and statements of account, and the period during which action may be taken by the Collector has been extended from one year to two years. The landlord has been given two months after the date of the demand in which to prepare the statement of account for each year before he becomes liable to a penalty.

Clause 36.—A slight modification has been made in section 61, in order to remove certain difficulties raised by the Courts.

Clauses 37 and 38.—Changes have made in sections 63 and 64, in order to make it compulsory on the Courts in certain cases to send rents deposited under sections 61A and 61B by money order to the landlord. The drafting of section 63 has been amended.

Clause 39.—In order to prevent landlords from harassing tenants by means of suits for rent which the latter have already tendered by money order or deposited in the Civil Court, it is proposed to preclude the landlord from recovering in such suits damages, interest or costs, and also to make him liable for damages.

Clause 40.—This amendment of section 65 is consequential on the proposal to give occupancy rights to certain classes of under-raiyats.

Clause 41.—The change here made in section 66 (*1*) is consequential on the proposal to adopt the Bengali year for the whole Presidency [*vide* clause 5(*f*)]. The period in sub-clause (*2*) has been extended to 30 days.

Clause 42.—It is proposed by an amendment of section 67 to charge interest on arrears between the date of the institution of the suit and the date of realization at the same rate as is now prescribed in section 67 for the period before the institution of the suit. On the whole it seems advisable to make the rate uniform for both the periods, and this should tend to discourage the defendants from protracting the proceedings.

Clause 43.—It is reasonable, owing to the circumstances in which damages are awarded, that such damages should not be less than the interest which would otherwise be given under section 67. The proposed amendment of section 68 gives effect to this proposal.

Clause 44.—The change made by this clause is consequential on the proposed repeal of the chapter on distraint.

Clause 45.—In view of the detailed proposals regarding the transferability of occupancy rights, it is no longer necessary to retain section 73.

Clause 46.—This change in section 74 is consequential on the proposed change made in section 179, which will make a contract for the payment of an *abwab* illegal in the case of permanent *mukarari* tenures, but it is not proposed to interfere with existing contracts regarding such tenures.

Clauses 47 to 53.—These clauses provide that an under-raiyat shall have the same privileges and liabilities as regards improvements as a raiyat. It is also proposed to make it clear that the construction of a well, tank, etc., for the purpose of drinking water is an improvement, and that a fee for the construction of any legal improvement is an *abwab*. The interpretation of the word "suitable" before dwelling-house in sections 76 (*f*) and 79 is doubtful, and the word has therefore been omitted in both cases. Clause 52 introduces certain consequential changes in sections 86 and 87 due to the new provisions relating to under-raiyats.

Clause 54.—At present it is necessary in consequence of section 85 for a landlord to serve a notice of annulment under section 167 on under-raiyats holding under a registered lease, in cases where the holding of a superior raiyat is sold in execution of a decree for arrears of rent due from that raiyat. As the interest of an occupancy under-raiyat will not be

The substitution of four months for three months is consequential on the amendment of section 106.

Clause 82.—Of the alternative forms of the Western Bengal and Eastern Bengal section 112, the Eastern Bengal form has been adopted. Experience however, shows that the provisions of this section can be defeated by the exaction of excessive rents pending the currency of the proceedings. It is therefore proposed that such rents shall not be recoverable for the period of the proceedings.

Clause 83.—This amendment of section 113 is consequential on the changes proposed in regard to occupancy under-raiyats.

Clause 84.—The repeal of section 115 is consequential on the omission of clause (2) of section 50.

Clause 85.—The Eastern Bengal and Assam section 115A has been adopted.

Clause 86.—It was resolved at a Conference of District Boards held in 1919, that tenants of any roadside lands should not be allowed to acquire occupancy rights in them. This clause therefore provides for the extension of section 116 to such and similar lands. The reference to Bihar has been omitted.

Clause 87.—It is proposed to correct the spelling of the word "kamat" by the substitution of the word "khamat."

Clause 88.—It is proposed to repeal the whole chapter on *distraint* as it is not necessary in the province as at present constituted, where it is rarely used, and then probably only as a means of oppression.

Clause 89.—It is proposed to amend section 144, so as to enable landlords, subject to necessary safeguards, to bring one suit against the same tenant on account of the arrears of rent of more than one tenancy. It is also proposed to make it clear that a rent-suit can only be brought in a Court within the jurisdiction of which the lands of the tenure or holding are situate.

Clause 90.—This clause gives additional facilities to landlords for the recovery of rents of tenancies held by a large number of co-sharer tenants. The matter is discussed at length in the main report.

Clause 91.—It is proposed to enact that section 147 does not apply to suits for the recovery of landlords' fees on transfers of tenancies. Transfers may occur at any time and therefore this section should not be made applicable.

Clause 92.—Of the two alternative Eastern Bengal and Western Bengal forms of section 147A, it is proposed to retain the Eastern Bengal form with, however, the addition of sub-section (4) from the Western Bengal section, so as to safeguard the rights of third parties. The drafting has been amended so as to bring it into conformity with the Code of Civil Procedure.

Clause 93.—The objects of the various changes proposed by this clause in section 148 are to co-ordinate the Eastern Bengal and Western Bengal forms of the law and to cheapen the procedure in rent-suits. The principal changes may be summarized as follows:—

(1) In areas where a record-of-rights has been prepared it is sufficient for the identification of the lands in suit, if the khatian number of the tenancy is given, and its area and rental.

(2) Summons may be issued at the discretion of the Court by registered post, and the Court may presume service on proof that the letter was duly registered.

(3) The Court may inform the natural guardian of a minor defendant that he will be treated as the guardian, and, unless he appears [illegible] within 14 days, the Court may proceed with the [illegible] that the minor is properly represented.

Clause 115.—The changes made in section 188 are explained in the main report.

Clause 116.—Of the two alternative forms of section 188A, the Eastern Bengal form has been adopted.

Clause 117.—The Patni Taluk Regulation deals with *khudkast* or resident raiyats, and not with occupancy raiyats. All occupancy raiyats are not therefore protected in the event of the patni taluk being sold up for arrears of rent. It is proposed to remedy this by an amendment of section 195

Clause 118.—This clause makes formal drafting amendments in regard to certain references in the Act.

Clause 119.—This clause substitutes references to the present Code of Civil Procedure for the references to the previous Code contained in the present Act.

Clause 120.—This clause makes certain formal re-arrangements in sections 3 and 148.

Clause 121.—*Vide* note on clause 34.

Clause 122.—This amendment is consequential on clause 26.

Clause 123.—In view of the hardship that may be caused to tenants holding on produce rents if they are called upon to pay up the rent for three years at one time, it is proposed to limit the period of limitation for rent-suits in such cases to one year. An error in drafting in the omission of the word "tenure" has also been corrected.

Clause 124.—In view of the proposal to make landlords' fees on transfer recoverable as rent, it is proposed in this clause to apply the period of limitation in the case of rent-suits to such fees from the dates given in the clause.

Clause 125.—Sub-clause (*1*) introduces a necessary change in the date of the Indian Limitation Act.

By sub-clause (*2*) it is proposed to enact that the time spent on the execution of a decree for rent on a sale which is subsequently set aside on application shall be excluded from the calculation of the period of limitation for the execution of such a decree.

an Indian Christian. The wives, sons, daughters and even distant kindred may be among his heirs and a large number of these heirs may be non-resident of the village. Similarly, of a Christian raiyat governed by the Indian Succession Act. His heirs may be many, and many of them again may be non-residents of the village. The landlord may of course go upon the land of the holding and may ascertain who among them are in actual cultivating possession, but it turns out more often than not that the persons in possession only form an insignificant portion of the whole. How is the landlord to shape his course for a rent suit? The whole legislation seems to be based upon the assumption that the whole duty of ascertaining the body of raiyats of all the holdings in his estate or tenure entirely and uncompromisingly lies on him, as if the raiyats have no duty by their landlords with regard to the conveyance of information of successions to the landlord.

7. To sum up the position of the landlord and the raiyat under the proposed legislation :—

THE LANDLORD.

(a) The right of vetoing a transfer made without the previous consent of the landlord is sought to be snatched away from him and a right of so-called pre-emption is proposed to be thrust instead. The price to be paid for this sham of a right is the loss of 25 per cent. of the consideration money that the landlord would otherwise have got. The penalty for objecting to a transferee on personal grounds is the payment of a further 10 per cent. from the landlord's own pocket.

(b) In the case of a transfer of an occupancy holding, the 25 per cent. of the consideration money hitherto paid as the landlord's *salami* will recede and recede until it will altogether vanish like smoke into the air. An instance may be taken. A holds 20 bighas for Rs. 30 as annual rent. His net profit after deducting the rent and expenses of cultivation is Rs. 5 per bigha or Rs. 100 in all. A sells the land to B and gets Rs. 100 × 10= Rs. 1,000, of which the landlord will receive 25 per cent. or Rs. 250. Now that occupancy right is proposed to be conferred on under-raiyats A would sublet to B for Rs. 40 as rent and realise from B a *salami* of (Rs. 100 – Rs. 10) × 10=Rs. 900, of which the landlord would get nothing. Subsequently A sells to B or to somebody else and gets (Rs. 40 – Rs. 30) × 10=Rs. 100. The landlord receives Rs. $\frac{100}{4}$=Rs. 25. Thus the landlord's portion dwindles from Rs. 250 to Rs. 25 or from 25 per cent. to 2·5 per cent., which may be made to vanish altogether if a nominal sub-lease is first created and then a few days after a sale is effected.

(c) In case of surrender or abandonment the landlord cannot have the benefit of taking into his *khas* possession and under his own cultivation any portion of the holding the raiyat held under his own cultivation, simply because a microscopic portion of the holding happened to have been sublet to an under-raiyat with occupancy right.

(d) A landlord does not often mean a big landlord. 'Small fry' are more numerous. The inclusion of a *bhagdar* in the category of a tenant coupled with commutation will either compel the 'small fry' to hold the plough himself or to find himself deprived of livelihood for himself, family and dependants.

(e) However small the landlord may be, he must have the luxury of a common agent if he happens to have co-sharers. This means that the larger the number of co-sharers and the smaller the income, the greater the burden of maintaining a common agent. In fact the one principle pervading all through the Bill appears to be that the tenant has no duty by his landlord, and that however hoarse the landlord may cry the one invariable response is "go to Court," a procedure which cannot be beneficial to the raiyat in the long run.

THE RAIYAT.

(a) As soon as a raiyat sublets he steps into the shoes of a landlord and makes himself subject to all the disabilities set forth above in the case of a landlord. He would no longer be his raiyati-self, an object of sympathy and protection.

Bill Clause 55 [*Sec. 86A*].—This section seems not to be clearly worded and as it stands it seems to add nothing to the present law. On the contrary it introduces a good deal of confusion into the present law. Sub-section (*2*) should therefore be omitted.

Bill Clause 57 [*Sec. 87A*].—The proposed section 87A seems inequitable. Suppose there is a holding consisting of 20 bighas held by an occupancy raiyat on an annual rent of Rs. 10. He sublets 1 bigha out of it to an occupancy under-raiyat at an annual rental of Re. 1. The raiyat abandons the holding. The effect of the proposed amendment would be that the under-raiyat will be entitled to purchase the complete occupancy right in the holding on payment of Rs. 60 only to the landlord, *i.e.*, he gets 19 bighas for Rs. 60 only. In the supposed case if a non-occupancy under-raiyat held 12 bighas on a rental of Rs. 24 the occupancy under-raiyat of 1 bigha will be entitled to oust the non-occupancy under-raiyat, and wiil have the whole holding for Rs. 60 only The most equitable provision should be such that the landlord may reap the benefit of the abandonment and the occupancy under-raiyat may not be prejudiced thereby, which is to say that he will retain his portion of the holding as an occupancy under-raiyat on payment of a fair and equitable rent to the landlord, in which case his status will be raised from an under-raiyat to a raiyat.

Bill Clause 63 [*Sec. 99A.*]—The legislation proposed in this clause seems uncalled for. There are a very large number of estates and tenures the rental of which does not cover the revenue or rent payable for the same and the pay of an agent. The proprietors or the tenure-holders as the case may be do the work of collection themselves. The compulsory appointment of a common agent for such estate or tenure would be an absolute infliction on them.

Bill Clause 90 [*Sec. 146B*].—"Before the trial of the suit has commenced" should be substituted for the words "before the hearing of the suit has been completed."

Sub-section (*3*) seems to have been based upon a misconception, to the effect that the sale was initially as if it were a sale in execution of a money-decree and the auction purchaser did not pay the full market value of the holding, though this result transpires only after the suit or proceeding in which the question has been litigated. This sub-section should be redrafted so that the purchaser shall not have to pay any additional amount, while the aggrieved co-sharers should participate in the purchase money according to their shares.

Bill Clause 94 [*Sec. 148A*]—No provision seems to have been made for the case where some of the co-sharers may combine with the tenants to oust a certain co-sharer whose name therefore is not at all brought out before the Court.

Bill Clause 95 [*Sec. 153*].—In the proviso proposed the words "from the decree or order in which no appeal lies" should be deleted. The procedure in rent suits is a summary procedure. The Court takes only notes of evidence and does not record the evidence *in extenso*. The appellate Court therefore is often unable to make a proper estimate of the evidence and therefore the decision on a question of title is generally unsatisfactory. But if a regular suit for establishment of title is brought the Court is bound to record the evidence *in extenso* and the appellate Court is in a position to make a proper estimate of the evidence.

Bill Clause 98 [*Sec. 158A*].—The amendment proposed to sub-section (*2*) of 158A seems uncalled for specially in view of the fact that the words "and in which such record is maintained" in sub-section (*1*) are omitted It will moreover only hamper the hand of the Local Government.

Bill Clause 102 [*Sec. 161*].—I am quite agreeable to the legislation proposed in this clause with the rider that the sale in execution of decree for arrears of rent to which the person in adverse possession is not a party will carry the whole tenure or holding, including the interest of the person in adverse possession.

Bill Clause 109 [*Sec. 178*].—Section 178(*e*) requires further consideration. There may be circumstances in a particular case which may justify a landlord in being entitled to a higher proportion of the gross produce.

I should think that each case will be governed by its own merits and the Civil Court will give the *burgadar* or by whatever name he may be called, the status of a raiyat, if the evidence justified the conclusion and will not give him that status if the evidence in the case led otherwise. The notes on pages 4, 5, 19 and 64 of Mr. Sen's work on Bengal Tenancy may usefully be referred to on this subject.

Then to come to the rulings referred to by Mr. McAlpin, viz.,—

14 C. W. N. 629

23 C. W. N. 614

19 C. W. N. 1,205

21 C. W. N. 505

Upon a close study of the first case I find that the plaintiff's case was that the *jote* "had been taken in *burga* settlement by the principal defendants" and the case was brought in the Small Cause Court. This case would lie in that Court only if the defendants were not the plaintiff's tenants, otherwise it would lie as a rent suit in the regular Civil Court. The plaintiff, therefore, evidently understood that the *burga* settlement was only a labouring contract. The defendants pleaded that "they had never taken a *burga* settlement of the plots in question". Thus the parties agreed as to the meaning of the expression "*burga* settlement" and the defendents wanted to get rid of this liability by altogether denying this settlement. The Small Cause Court Judge in reporting the case to the High Court said, and said distinctly, "the term *burgadar* in this district is ordinarily understood to mean a cultivator, who, under the terms of the contract, is a servant or a labourer under the holder of the land". We thus come to this position.—

(1) *burgadar* in the district means a servant or labourer ;

(2) plaintiff says the defendants took a *burga* settlement.

∴ the defendant was a servant or labourer.

∴ the case lay in the Small Cause Court.

This case, therefore, shows that the word "*burgadar*" in the district of Pabna does not connote a tenancy. A *burgadar* in Pabna cannot then be given the status of a raiyat.

The second case, that reported in 23 C. W. N. 614, went upon the terms of the contract, and thus supports my view that the agreement between the parties must govern the relation.

Mr. McAlpin says that the tenancy was a *dhankarari* tenancy. This is more than I can say in the teeth of the finding of the High Court. The High Court says it was not a tenancy but a labouring contract. It would thus be unavailing to persist in calling that a tenancy which the High Court has called a labouring contract.

The third case, that reported in 19 C. W. N. 1205, also supports the view I entertain, viz., the evidence in the case governs the relationship. The Judges say the question, which is raised, is whether the *adhiar* is a tenant or a labourer. If he is a tenant, then his possession would be protected under section 9 ; if a labourer, it would be otherwise. In the first place there is no affidavit before us that an *adhiar* in this part of the country means a "labourer" and not a "tenant". There is, on the contrary, a statement in the affidavit that the land was let out to the plaintiff as "*adhiar*," which term is appropriate to the existence of a tenancy. The various books upon the subject which were referred to show that very largely an *adhiar* is a "tenant". The expression "very largely" clearly implies that in some cases, at any rate, an *adhiar* is not a tenant. Thus the High Court upon the evidence in the case came to the conclusion that the *adhiar* in that particular case was a "tenant".

I come lastly to the last case referred to by Mr. McAlpin, viz., that reported in 21 C. W. N. 505. Mr. McAlpin quotes a portion of Teunon, J.'s judgment. The Senior Judge Fletcher, J., said :—"*Bhagchasis* are persons who cultivate land rendering a share of the produce to the landlord. They may or may not have any interest in the land, but are not hired servants, etc." This means where one has an interest in land, he may be a raiyat ; where one has not, he is not a raiyat. This case again supports my idea that local custom or agreement is the governing element in every case. Teunon, J.'s statement quoted by Mr. McAlpin is also based upon the evidence given in the case. We generally find loose language used in describing legal relationship. This should be carefully avoided. Where the *burgadar* according to the local custom or agreement is a tenant, the other party would be the landlord ; where, however, according to local custom or agreement he is not a tenant, the other party cannot be described as the landlord. The language used must strictly conform to the exact legal relation that subsists between the parties whether by local custom or agreement. Loose language, even in high judicial utterances, is at the bottom of much misconception in the appreciation of legal relationship.

Note of dissent by Babu Brojendra Kishore Ray Chaudhury.

I sign this report subject to the following note of dissent. It relates chiefly to (1) the transfer by sale of occupancy holdings and extension of occupancy rights to under-raiyats, (2) the practical abolition of the *barga* or *bhagi* system and provisions regarding commutation, (3) some points regarding the procedure for realisation of rent, and (4) the conversion of non-permanent tenures of Rangpur into permanent tenures.

TRANSFER OF OCCUPANCY HOLDINGS BY SALE AND EXTENSION OF OCCUPANCY RIGHTS TO UNDER RAIYATS.

It is useful to recall that the question of attaching the right of occupancy to all raiyati lands, and that of allowing free transfers of occupancy holdings, are not matters of mere recent history. These proposals came up for the consideration of the Government of Bengal, the Government of India, and the Secretary of State upon there port of the Rent Commission in 1880. And the provisions embodied in the Bengal Tenancy Act of 1885 are a final result of the mature deliberation of these authorities upon the *pros* and *cons* of the questions. It will be remembered that Act X of 1859 for the first time conferred the right of occupancy on certain raiyats on the basis of the rule of 12 years' residence, and its effect according to Mr. Justice Field was that a large number of tenants who, before the Act were mere tenants-at-will and so liable to be rack-rented, at once acquired a protected tenure. When the Government of India, in their despatch of March 1882, proposed to the Secretary of State that occupancy right should be attached to all raiyati lands, the Secretary of State demurred to this proposal. And in declining to sanction it, he stated that the proposal involved a great and uncalled-for departure from both the ancient custom and the existing law of the country. The Government of India defended their proposal in a subsequent despatch in October 1882, but the Secretary of State adhered to his former opinion This finally disposed of the proposal for extending the right of occupancy to all raiyati lands, and it was not heard of till the present committee came to revive it. Similarly, the proposal for allowing free transfer of occupancy holdings was deliberately negatived by the legislature in 1885.

In briefly relating this chapter of the history of tenancy legislation in Bengal, it is my intention to emphasise the fact that when the Bengal Tenancy Act was placed on the Statute Book, as a corollary to the permanent settlement, after subjecting the prevailing condition of things, the rights and privileges attaching to tenancies and the long established custom of the country, to the closest scrutiny, the highest legislative authority in India finally prescribed the relations of landlord and tenant in a manner from which no departure would be justifiable, except on grounds of overwhelming necessity or impelling public policy.

A representative of the interests of the landlords would, in this view of the matter, be justified in opposing any change in the tenancy legislation in the two particulars mentioned above. But it is not my intention to be obstructive, if it is found that in the present legislative proposals there are advantages in detail which compensate the landlord to a reasonable extent for the large concession which he is asked to agree to in matters of principle.

The right of free transfer which the proposed legislation would confer on raiyats in respect of occupancy holdings, is undoubtedly a change of a fundamental character. And before a landlord can be a consenting party to such a change, he should be assured of the continuance of the most important privileges which he enjoys under the existing system. It is proposed, no doubt, that the *salami* or transfer fee will be compulsorily payable to the landlord at a uniform rate, which at first sight suggests that the new arrangements will cause very little financial loss to him. The landlord will also have the right of pre-emption, enabling him, when he so chooses, to refuse to recognise a transferee. Had these proposals stood alone, there would not perhaps have been much ground for complaint from the practical point of view. But these are unfortunately accompanied by new provisions about the status and privileges of sub-lessees which in effect neutralise the benefits of these proposals.

It often happens that the defendant continues the case for a long time on one plea or another, and then does not appear at all at the final hearing. In such cases *ex parte* costs are allowed by the court. The landlord in such cases has unnecessarily to incur heavy costs in producing his evidence, oral and documentary, and in pleader's fees, for which he should be compensated.

Clause 94.—The following should be added as clause 94A :—

"For section 150 of the said Act the following shall be substituted namely :—

"Where a defendant pleads that the whole or any portion of the amount claimed by the plaintiff on account of rent has been paid, the court shall refuse to take cognizance of the plea unless he specifically declares the amounts which he has paid towards satisfaction of such claim and files rent receipts as provided in the Act for the same and pays into court the balance, if any."

In section 150 there is a provision for deposit. But the tenant avoids it by invariably pleading that nothing is due by him to the landlord, and prolongs the case, on the most flimsy grounds, often for years.

Clause 107.—After clause 107 the following should be added as clause 107A :—

"For section 171 the following shall be substituted namely :—

"Notwithstanding anything contained in Order 21, Rules 89 and 90 of the Code of Civil Procedure, where a tenure or holding is sold for arrears of rent due thereon, the judgment debtor or any person owning the property or a share thereof or holding an interest therein or whose interests are affected by the sale, may, within 30 days from the date of sale or from the date of the knowledge of sale, apply to have the sale set aside on his depositing in court for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to five per centum of the purchase money.

"Provided that no sales shall be set aside if the deposit is made after 30 days from the date of sale unless the applicant proves :—

"(*a*) that there was material irregularity or fraud in publishing or conducting the sale by which the applicant has sustained substantial injury,

"(*b*) that the judgment debtor had no saleable interest in the property sold."

There is provision for setting aside the sale by deposit within 30 days from the date of sale (section 174, Bengal Tenancy Act and Order 21, Rule 89, Code of Civil Procedure). But there is no provision for deposit when the judgment debtor or other persons come forward after 30 days to set aside the sale under Order 21, Rule 90. As the latter case requires no deposit the tenant invariably avails himself of this. Sometimes, years after a holding is sold the judgment debtor or his mortgagee appears and without making any deposit succeeds in getting the sale set aside on the most trifling grounds, taking advantage of the over leniency of the court in this respect. It is with a view to avoid this and enforce deposit in all cases that the provisions of section 174, Bengal Tenancy Act, and Order 21, Rule 90 of the Code of Civil Procedure have been combined.

The following further proviso should also be added :—

"Provided also that no sales should be set aside by application under this section if it is made beyond 6 months from the date of sale."

The further remedy prescribed for this in the Civil Procedure Code is a regular suit, limitation of which is one year from the date of sale. For such suit *ad valorem* court fee has to be paid. The tenant, therefore,

force their will by questionable means. On the other hand, the bulk of the landlord community consists of petty landlords with rent-rolls hardly exceeding four figures. In their case, any question of threat or coercion or recourse to unfair means is an impossibility. It is therefore highly desirable that their just grievances should be attended to and necessary protection provided for. There are at least a few points on which the landlords feel very strongly, but it is most unfortunate that I could not convince the committee of their seriousness, and I am very sorry that I have to submit a special note on them.

4. The main grievance of the landlords of Bengal is that its land laws do not afford them sufficient protection against non-payment of rents by the tenants. Instances of such non-payment, on the other hand, are steadily on the increase, chiefly owing to the passing of lands into the hands of non-resident tenants. Realisation of rents by suits, in such cases, is however a ruinously costly and cumbrously dilatory procedure. What the landlords, therefore, wanted was a summary procedure in the matter of realisation of rents. But any proposal for such summary procedure is beset with so many practical difficulties that the committee could not come to a definite conclusion on the point and have practically left the thing as it stands at present. It is true that some minor changes have been made in the procedure but they are almost useless for all practical purposes. All that the committee have been able to accomplish in this connection is that certain facilities have been afforded in the case of co-sharer landlords and tenants. But this does not at all touch the real issue *viz.*, protection against non-payment of rents. I admit that no direct satisfactory solution of the difficulty could be presented before the committee but I beg to submit that there is at least an indirect way of meeting this difficulty, which would prove an effective deterrent against withholding the payment of rent, and that is to make the tenant liable to ejectment for continuous non-payment of rent for an unreasonably long period. It is an admitted principle of the land laws of Bengal that a tenant must continue to pay rent to entitle him to hold or occupy the land, and the Tenancy Act before its amendment in 1885 made a tenant liable to ejectment in the case of his failure to pay rent (sections 21 and 22, Act X of 1859 and sections 22 and 23, Act VIII B. C. of 1869). In recommending the repeal of these sections, the Rent Committee of 1880 said that "as an occupancy holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of rent" (paragraph 34). But it is evident that the mere saleableness of a tenancy in execution of a rent decree has not been quite effective in securing a prompt realisation of the arrears. An eminent jurist has rightly observed that the real trouble of a landlord begins after a decree has been obtained. The procedure bristles with obstacles by which the realisation of the decretal amount can be indefinitely put off. It is therefore extremely necessary to provide for a coercive measure on the lines of the repealed sections of the old Act, which would operate as a preventive against the practice of withholding the payment of rents for an unduly long period. Undoubtedly there might be quite reasonable grounds for being unable to pay rent regularly, and a tenant might be incapable of making any payment even for a year or two for reasons over which he has no control, such as a flood, a drought or domestic troubles. But if a tenant persistently withholds payment for an unduly long period, in spite of the facilities which have been provided in the proposed legislation and which, by the way, no longer leave any room for a complaint on the ground of the landlord's refusal to accept payment, then I think it can be said without any fear of contradiction that it is rather the tenant who wants to harass the landlord by non-payment, knowing it only too well that a rent suit will, in nine cases out of ten, prove ruinous to the landlord. We should here also bear in mind that the committee have done away with the provisions contained in the chapter on distraint, which, though seldom resorted to by the landlords, had a great moral effect on the tenants in the matter of regular payment of rents. In view of these circumstances I strongly recommend the restoration of the repealed sections of the former Act which provided for ejectment for non-payment of rent, with necessary modifications so as not to operate harshly on the tenants, who, from temporary causes, are unable to make regular payments. I have accordingly made necessary changes in sections 10, 18 (*b*), 25 (*c*), 65 and 66 (1) of the present Act. The proposed amendments would be found in my notes on clauses 10A (new), 14, 21A (new), 40 and 41 of the draft Bill.

Clause 22.—The proviso to section 26D of the draft Bill should be replaced by the following:—

"provided that in the case of a transfer, other than a sale in execution of a decree, of a holding or portion or share thereof, the landlord may, within two months of the receipt of the notice of transfer, apply to the lowest Civil Court having jurisdiction to entertain a suit for rent of the holding, to fix the market value of the holding or of the transferred portion or share, or to decide the exact amount of the consideration money, and the transferee shall be liable to pay to the landlord a fee calculated at the rate of 25 per cent. of such market value, or consideration money, as the case may be, to the extent the amount of such fee is in excess of any fee which he has already paid, and an order of the court directing the payment of such additional fee shall have the force of a decree for arrears of rent."

The committee have provided for calculation of the fee on the market value in all cases of transfer except in the case of a voluntary sale of an *entire* holding. To me there seems to be no justification for this exception. It is obvious that the right to repurchase would be exercised only in the case of an undesirable transferee; ordinarily the zamindar would be satisfied with a fee calculated on the basis of a proper valuation of the holding; it is, therefore, necessary to provide for the calculation of the fee on the market value in all cases of transfer. I should mention here that even the occasion for such calculation of the fee by the court would be rare and arise only in cases of gross undervaluation. The effect, therefore, of this provision would be rather to check undervaluation.

Clause 31A.—A new clause to the following effect should be added after clause 31 of the draft Bill:—

"31A.—At the end of section 51 of the said Act the following shall be added, namely,

'provided that notwithstanding anything contained in this Act, any rent which has been paid for a continuous period of three agricultural years immediately preceding the period for which the rent is claimed, shall be deemed to be the rent lawfully payable for the time being.'"

Reasons for the change are stated in my note of dissent on general principles (para. 5).

Clause 40.—The proposed clause 40 of the draft Bill should be replaced by the following:—

"40. For section 65 of the said Act the following shall be substituted:—

'65. The tenure or holding, as the case may be, of a tenant shall be liable to sale in execution of a decree for arrears of rent and the rent shall be a first charge thereon.'"

Reasons for the change are stated in my note of dissent on general principles (para. 4.)

Clause 41.—In clause 41 of the draft Bill, for sub-clause (*a*) the following shall be substituted, namely:—

"(*a*) in sub-section (*1*) for the words 'permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the Jeyt where the Fasli or Amli year prevails', the following shall be substituted, namely, 'non-occupancy raiyat or under-raiyat, for a continuous period of three years, or from a non-occupancy raiyat or under-raiyat for any quarter, at the end of the agricultural year.'"

Reasons for the change are stated in my note of dissent on general principles (para. 4) and also in the note on this clause in the draft Bill.

Note of dissent by Maharaja Kshaunish Chandra Ray Bahadur.

Part I.

I regret I cannot but oppose the principle of the Bill when I find that the last stroke which will settle the impoverished, yet much abused, landlords of Bengal is going to be dealt and especially when petty landlords including mostly poor *bhadraloks*, women and children, are going to be deprived of their means of subsistence. The Permanent Settlement is looked upon as having conferred the greatest boon on the zamindars and little or nothing on the tenants. A cursory glance at the statistics will show that of the unearned increment in land by far the lion's share has gone over to the tenants, and a very small fraction to the present zamindars, who are mostly such as have not derived their title by birth alone but have themselves or through their ancestors paid for what they enjoy now. It would be interesting in this connection to compare the unearned increment accruing to tenants in temporarily-settled estates or Government estates.

Occupancy right was never and is not even now transferable but it is now sought to be made so, and an offer of 25 per cent. of the consideration money or its like has been offered as a bait to the zamindars. But "bequest to a natural heir," "partition" and "lease" have been excluded from the category of transfer, thus deliberately nullifying what the legislation outwardly proposes to give to the zamindars. What occupancy right will after this be sold at all? The raiyats will grant leases keeping a nominal profit and taking the price by way of *salami*. Portions of holdings have already been transferred in numerous cases on the basis of the ruling that the zamindar cannot oust the transferees now but as soon as this new provision will come into force the co-sharer tenants will partition the holdings amongst themselves and the zemindar will be bound to accept them not even in lump but separately !! I am not sure whether all these far-reaching effects of these provisions have been carefully considered. At the time of the permanent settlement it was the *khudkost* or resident raiyats who had a permanent interest in their holdings and the first Rent Act (Act X of 1859) of Bengal extended this much coveted right to several others who had absolutely no claim to it, and the present Act threw open this right to a far more extensive class of tenants, granted more privileges than could be dreamt of by the tenants. Indeed it was laid down that the "settled raiyat" would acquire a right of occupancy in all and every land that he held no matter whether a certain plot was temporarily settled with him for a year even by a registered lease. One should pause and consider with an even mind the infringement on the rights and privileges of the zamindars since the time of the Permanent Settlement Now it is sought to make the occupancy right transferable and the zamindar has been offered some compensation. There should not be any objection to the curtailment of one's rights if some compensation be forthcoming. In addition to the above three provisos inserted with a view to rob the zamindars of this compensation—inadequate though it be—the last and not the least is the provision which purports to give occupancy right to the under-raiyats. This makes the actual zamindar get his *salami* once and for all. The Rent Acts that have been passed were passed on the ground that at the time of the Permanent Settlement tenants were left at the sweet will and pleasure of the landlords and it was necessary that their interests should be protected. Let us then stick to this principle and go no further, Was there an under-raiyat at that time? Or is he not a creation of the present circumstances? If he had no existence at the time of the Permanent Settlement, why should the present state of affairs which has been in existence for 37 years and on which the economic conditions of the people have been arranged, be given such a rude shock, and persons with no right be given a boon which they could never think of, while others who know and believe themselves to be practically in *khas* possession of their lands be suddenly robbed of their land?

I would now examine the position of a rent receiver. He really cannot live. With all these curtailments the zamindar cannot live. Rents are enhancible only by bits and not within 15 years—a period during which the price of necessities of life sometimes goes up a hundred per cent. The provision of the law laying down increase of rent for increase in the price of food grains is plausible enough on paper. But facts give the lie to this. Paddy

Note of dissent by Babu Surendra Chandra Sen.

I have signed the report of the Committee subject to dissent on certain points which are stated below :—

Clause 5(a).—Definition of tenant · I think the contrary presumption should be provided for, for the benefit of the landlord, viz , "*if the landlord provides the plough, cattle or any part of the implements of agriculture that person shall be deemed to be a labourer.*" This would make the law easier of application.

Clause 5(d). Definition of holding In the definition of "holding", after the word "raiyat" the words "or under-raiyat" have been proposed to be added in the preliminary draft Bill in view of the general principle adopted by the committee regarding the occupancy right of under-raiyat. I am however of opinion that an under-raiyat ought not to be given a right of occupancy and therefore the words "or under-raiyat" ought not to be added. See my remarks under clause 6.

The definition of "holding" should be altered, and it should be as follows·

"*Holding means the interest of a raiyat in the land which he holds and which forms the subject of a separate tenancy*"

The practical difficulty which is now felt and the reasons for my suggestion stated above will appear from the foot-note below.*

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*Occupancy right in undivided share of land.

S. 3 cl (9) According to the definition of the term " holding" as interpreted by the case law, an undivided share of a parcel of land is not a holding

Illustration

A and B are joint proprietors of an estate A lets out his one half share *as a tenure* of a parcel of land by one lease, B lets out his one half share of that parcel separately by another lease, there become two *distinct tenures*, A or B may sue alone for ejectment or enhancement and the decree obtained for rent is a rent-decree *But if A lets out his one half share of land as a raiyati tenancy and there are stipulations that A alone will be entitled to sue for rent or enhancement or ejectment, and B lets out by a separate lease his undivided share with all rights of enhancement ejectment, etc*, still according to the case law A or B cannot alone sue for enhancement or ejectment, it has been held that the tenancy under A or B is not a holding The case law is to the effect that a *parcel* or *parcels* of land means "an *entire parcel* or "*entire parcels*" *of land* "

The practical difficulty is that the landlord cannot, although there is a separate lease, bring a suit for enhancement of rent under s. 30, for it is the landlord of a "holding" who can bring such a suit, it is not possible to bring a suit jointly with his co-sharer landlord, for the leases are separate the rent is separate and the stipulations are different Likewise the decree for rent is not a *rent decree* but a money decree

1 C. W. N. 521 S. C., 26 Cal. 917, 2 C. W N. 44; 2 C W. N 680, 16 C W. N 877, S. C. 16 C L. J. 9, see contra, 8 C W. N. 781; 3 C. L. R 140, observations of Richardson, J 18 C W N. cclxiv (264 notes portion).

It is suggested therefore that the definition of " holding " should be altered and in this respect the definition of " tenure should be looked into, and the definition may be altered thus :

"*Holding" means the interest of a raiyat in the land which he holds and which forms the subject of a separate tenancy*"

The word used in s 30 is ' holding" and the word in s 105 is "land"; it has therefore been held that although the landlord of an undivided share of a parcel of land which has been let out by a separate lease cannot bring a suit for enhancement under s 30, but he can make an application for settlement of rent under s 105 as the word used in s 105 is "land" and not ' holding '

cf. definition of "holding" in the "Landlord and Tenant Bill", in the Report of the Rent Law Commission, [illegible]

21 C. L J. 302.

From this it is clear that Regulation II of 1793 recognised the fact that even landholders had no right to transfer their land by sale or mortgage before the Permanent Settlement.

Extract from Harrington's Analysis, pages 269, 281 and 301 :

"On the whole, therefore I do not think that these ryots can claim of alienating the lands......by sale or other mode of transfer, nor any right of holding them at a fixed rent, except in the particular instances of *khudkast* ryots, who from prescription, have a privilege of keeping possession as long as they pay the rent stipulated for by them."

There was no right of property nor right of transfer in occupancy holdings : *see* clause 7, section 15, Regulation VII of 1799.

There were two classes of raiyats :

(*a*) those who cultivated the lands of the village to which they belonged and who either, from length of occupancy or other cause, had a stronger right than others and were in some measure (according to Mr. Shore) considered as hereditary tenants and they generally paid the highest rent; they were called *khudkast* raiyats; whereas the other class cultivated lands belonging to a village where they did not reside, they were called *paikast* raiyats; according to Mr. Shore *they were tenants-at-will.*

Both these classes of *raiyats* had no right of transfer by either sale or mortgage of their holdings, as pointed out above.

(2) *After the Permanent Settlement and before the passing of Act X of 1859.*

"The law and custom affecting ryots was not altered by the Permanent Settlement." *Mr. Justice Campbell's Minute,* dated 12th October 1863.

"Act X of 1859 was intended for the most part as a consolidation of the existing law and custom...........*so the law relating to non-transferability remained the same as before.*" Mr. Justice Campbell's Minute, dated 1st June 1864.

3. *After the year 1859 up till the year 1885—the year in which the Bengal Tenancy Act was passed.*

It does not require any authority to be cited to show that the same law about transferability continued. Sir Richard Garth says in his minute, dated the 8th January 1880, in reference to Mr Justice Fields's minute as follows:—"He admits very fairly at the outset that before the period of British supremacy in India, tenures, as a rule, were not alienable; and also that *at and after the time of the Permanent Settlement it was always considered,* both by the legislature and the courts, that raiyats' tenures, whether they were permanent or temporary, were not transferable." It should however be mentioned here that the legislature recognised in the Bengal Tenancy Act that occupancy holdings are transferable by local usage (*see* section 183, illustration). It is submitted that there was never any such custom, nor has any local usage ever grown. Sir Richard Garth no doubt says in his memorable minute that "such tenures (*i.e.,* occupancy holdings) have never been yet transferable except by special custom." At the same time he says "such a custom is very rarely proved. I have known it repeatedly attempted in muffasil courts but very seldom proved."

I have looked into the law reports very carefully but I have not been able to find out a single case where it has been held that the custom or local usage of transferability of occupancy holdings has been proved to the satisfaction of the court. The High Court has laid down that in order to prove a custom or usage of transferability of occupancy holdings, what is necessary to prove is that such transfers have been made (1) to the knowledge (2) and without the consent of the landlord, (3) and that they have been recognised by him either without payment of a *nazar* or upon payment of a *nazar* also fixed by custom.

No such custom or usage has ever been proved, and if there had been an existence of such a custom or usage we would have found it proved in the law courts.

Apart from the above considerations it is not desirable to give the right of transfer of their holdings to the raiyats; mainly forthe following reasons:

(*i*) it would be unjust to the landholders,

(*ii*) it would be ruinous and injurious to the raiyats,

(*iii*) It would be mischievous to the country.

So such legislation which is not beneficial either to the landholder or to the raiyat, *or to the country*, is neither called for, not at all desirable I propose to discuss these three matters together.

As to the landlord's interest, it has never been questioned that it is unjust if the right of transfer is given to the raiyat; not only his proprietary right will be interfered with as pointed out above, but also the following consequences will arise:

(*a*) an undesirable tenant will be thrust upon him,

(*b*) the land will be liable to pass to rival and inimical landlords,

(*c*) capitalists, planters, *mahajans*, pleaders and other powerful people will come into the place of the raiyat,

(*d*) even the right of pre-emption, if given to the landlord, would not be of any avail, for he may not have sufficient funds available to buy up the holdings transferred; moreover it is unjust to expect that a landlord who under the present law has the right of *khas* possession should be required to pay the sale price of the holding (when large fields, say one thousand acres of raiyati lands, will be purchased by capitalists, even the richest zamindars would find it difficult to buy up).

As to whether legislation granting transferability of occupancy raiyati holdings is beneficial to the raiyat, it is ordinarily thought that such legislation is desirable mainly for the following reasons:

(1) that the tenant would have proprietary right in the land and thus his status would be improved,

(2) he would be able to raise money by mortgage or sale and would be able to improve his condition by investing money in other pursuits, trade, etc.,

(3) he would be able to abandon his village and holding, and migrate to a village of his own choice and settle there by taking settlement of new holdings,

(4) the raiyat in years of bad harvest and failure of crops, as also in time of distress, marriage and other ceremonies of the family, would be able to raise money by mortgage or sale of a portion of their family property, and thus save himself from starvation and would be able to meet the necessary expenses of the ceremonies of the family.

It is unnecessary to add many other reasons which are advanced on behalf of the tenant.

Notwithstanding all these advantages I am of opinion that *it will be ruinous to the raiyat* for the reasons stated below. The rule that occupancy holdings are not transferable is a *protective measure* so far as regards the raiyat himself; it is a benefit which cannot be deprived of even by the landlord; the land will always remain in the family which will have a

IV. *Present case law and conflict and whether there should be any legislation*:—

It is not necessary to take the trouble to cite all the rulings and references on the subject. But if the case law is summarised we find that there is a conflict on the case law and it is not in a satisfactory condition in regard to the following matters:—

(*i*) Under what circumstances transfer amounts to abandonment and landlord's right of *khas* possession.

(*ii*) Transfer of part of a holding.

(*iii*) Usufructuary mortgage and right to *khas* possession.

(*iv*) Transfer of entire holding and sub-lease by the transferee.

(*v*) Tenant's estoppel when he transfers.

(*vi*) Involuntary sales at the instance of landlord or third person in execution of money decrees.

I am of opinion that all kinds of transfers should be discouraged and prohibited and for this there should be legislation:—

(1) Allowing a landlord to get *khas* possession when there is a partial transfer as well as an entire transfer by sale, gift, bequest or usufructuary mortgage.

(2) Allowing a landlord to get *khas* possession even when a tenant after transfer takes a sub-lease.

(3) Allowing a landlord to get *khas* possession when he grants a permanent lease.

(4) Allowing a tenant not to be estopped by his own act when he mortgages a holding and allowing him to object to the sale in execution of the mortgage decree.

(5) Allowing a tenant to object to involuntary sales at the instance of either the landlord or third persons in execution of money decrees.

(6) Disentitling a transferee to claim any kind of right whatsoever against the landlord or third persons.

Clause 25, Commutation.—An under-raiyat should not be given this right, inasmuch as a raiyat who sublets generally does so for his subsistence and not for the purposes of trade or profit.

I also think that in cases (*a*) and (*b*) of the proposed section 40(5) the court should be obliged to refuse the application of the tenant for commutation.

Burgadars.

For the maintenance of widows and poor families of the *bhadrolok* class and who cannot cultivate lands themselves, they generally get the same cultivated by other people, generally by the members of the cultivating class, on the stipulation that the owners will get a certain portion of the produce. Their maintenance is thus secured. The law in this respect is, that if the contract for cultivation creates a relationship of landlord and tenant, then the tenant is entitled to have the rent commuted under s. 40 of the Bengal Tenancy Act; but if the relationship is that of partnership or master and servant then there cannot be any commutation. The persons who by virtue of the contract of cultivation become tenants or servants or partners are all known by the name of *burgadars*. The poor widows or the poor families, who thus employ others for cultivation, scarcely know the legal technicalities as to the distinction as to what constitutes the relationship of landlord and tenant or as to what constitutes the relationship of master and servant or partners. Consequently these poor families are deprived of their maintenance when commutation proceedings are obtained. It is therefore desirable that in the case of such *burgadars* s. 40 (commutation proceedings) should not apply. The *burgadars* are not at all prejudiced, inasmuch as they, at the time of the letting out of

Rulings on references from the mufassal Small Causes Courts, p. 113; 1 C. W. N. 55, 1 All 217; 11 W. R. 151; s. c., 2 B. L. R. 27; 21 W. R. 124; 14 C. W. N. 629; 21 C. W. N. 505, at p. 511, 19 C. W. N. 1205 (Adhiar of Rungpur).

S. 40.

not from the date of confirmation of sale. The proposed change that the title should accrue from the date of confirmation of sale should not be made. Consequential changes should also be made in sub-section (7) of section 158A. *See*— clause 91.

Clause 111. Homestead of raiyat.—I think that the provisions of section 182 should not be made applicable to the homestead of an under-raiyat.

I also think that where a raiyat holds his homestead otherwise than as a part of his tenancy, the provisions of the section should be made applicable only when the homestead is held *under the same landlord under whom the agricultural lands are held and in the same village.*

Clause 112. Usage.—It has been proposed that the illustrations to section 183 should be omitted. I think that they ought not to be repealed. There are two illustrations (1) as to usage of sale of occupancy holding (2) custom or usage as to the acquisition of occupancy right by an under-raiyat.

Both these illustrations seem to be necessary.

Clause 113. New Chapter XV-A.—I think the proposed legislation works a great hardship on the landlord and it interferes with the existing rights and privileges enjoyed by him.

Clause 125 sub-clause (2). Execution of decree when a sale is set aside.—The proposed change is not necessary for two reasons: (1) the protection sought for is provided for by law, when a sale is set aside, the decree-holder is entitled to proceed on with the previous application for execution and he is afforded an opportunity to put fresh process fee. (2) the alteration proposed will work a great hardship on the tenant, for if a fresh application for execution is allowed to be made the result will be that the landlord will be entitled to draw interest for the intervening period, for no fault of the tenant.

MATTERS NOT COVERED BY THE CLAUSES.

Whether landlords should first proceed to sell the defaulting tenure or holding.—In the committee I raised the following point, viz., that as rent was a first charge on the holding a rent decree ought to be executed in the first instance against the defaulting tenure or holding *and not in the first instance against the person or other property of the tenant.* It was agreed that a note of dissent should be written on this subject *vide* the proceedings of the 38th meeting of the committee dated the 12th August, 1922.

The reasons for my proposal may mainly be summarised as follows:—

(i) Tenures and holdings sometimes prove to be losing concerns *for no fault of the tenant,* and it is desirable that he should have an opportunity of getting it sold. It is true that a raiyat can surrender his holding but it is difficult for him to prove it, and if there is a litigation with the landlord who questions the fact of surrender, it means the ruin of the raiyat. As to a tenure it cannot be surrendered unless the landlord agrees.

(ii) The landlord will not be prejudiced inasmuch as in a rent sale he gets the tenure or holding in the same condition as it was before the date of the creation of the lease, for he can annul all encumbrances created by the tenant.

(iii) Many landlords at present first proceed to execute the decree by attachment of the moveables of the tenant: this causes a great oppression upon him; there is sometimes an attempt for attachment of such moveables which cannot be lawfully attached.

In this connection I should state that according to section 65 of the Bengal Tenancy Act rent is a *first charge,* and probably the intention of the legislature was that it was such a charge which should be first enforced, although no doubt the case-law is otherwise.

Note of Dissent by Sir John Kerr and Messrs. Duval, McAlpin, Birley, Sachse, Thompson and Khan Bahadur Muhammad Abdul Mumin.

Clause 94.—We are of opinion that the words "except by means of a suit for money brought under the Code of Civil Procedure, 1908," should be deleted from the proposed sub-section (8). These words enable individual co-sharer landlords to bring separate suits for the recovery of rent as money-suits. The object of the whole clause is, however, to provide co-sharer landlords with special facilities for realizing their own rents in one suit by making the remaining co-sharers parties to the suit. The latter are afforded an opportunity of appearing as plaintiffs in the case, and if they do not avail themselves of it, we consider that they should be debarred from harassing the tenant and bringing another suit against the tenant for the rent, whether as a rent or money-suit. One of the accepted principles of tenancy legislation in Bengal is the prevention of a multiplicity of suits againt a tenant in respect of the same cause of action. We undertook the amendment of the law on this point, in order to afford relief both to landlords and to tenants. The insertion of the words mentioned above entirely frustrates the object of the new section and, unless they are removed, we would oppose this clause.

The landlords should not be legally entitled to unearned increment. As the Government revenue is fixed, it is but fair that the rent due from the raiyats should also be fixed on the basis of the table of rates prepared by competent officers. The zamindars should be made liable to pay the expenses of proper education and sanitation of the tenants of their respective estates.

Clause 5(e).—The words "and required by him by reason of his connection with his holding" should be deleted from the definition of homestead.

Clause 19.—I object to section 22 being a bar to acquisition of the right of landlord by a raiyat causing extinction of his raiyati right for ever, but in converse cases it is to be treated as a permanent tenure. I propose that so long as the landlord's right subsists the raiyat may be precluded from exercising his raiyati right.

Clause 21.—Landlords should give up their claim to a share of the value of valuable trees, as it is likely to lead to dispute in almost every case. Jam and mango trees should be omitted from the explanation.

Clause 22.—This clause should be made applicable only to voluntary sales.

The right of pre-emption is proposed to be given to landlords to avoid an undesirable transferee. But this gives them more than what they deserve, and will enable them to acquire lands or realise exorbitant fees in every case, even in cases in which the transferees are cultivating raiyats of the same village or locality or near relations of the transferor.

As to transfer fee, I think that 25 per cent. of the purchase money is excessive and six times the rent exceeding 25 per cent. is exorbitant.

The first proviso to section 26G seems to me unfair to smaller co-sharers.

Clause 25.—I do not think that produce rents are generally against the public interest and strongly object to the proposed provision of amended section 40 being applicable to under-raiyats. The probable effect will be that most of the *burgadars* and *adhiars* will be deprived of their lands unless they agree to contracts barring their acquisition of occupancy rights, and people will take to cultivation by servants or hired labourers who will be more indifferent than the *burgadars* and *adhiars*.

Clause 28.—I cannot agree to confer occupancy right on all the under-raiyats irrespective of the duration of their possession and term of their lease. Under-raiyats who are holding under a written lease for a term of not more than 9 years and who may hereafter be settled for a term should not acquire occupancy right. The power of granting under-raiyati leases for a term should not be taken away from raiyats in general.

Clause 29.—I do not see any reason why under-raiyats should have occupancy rights as against their immediate landlords only and not against the superior landlords. At present the under-raiyats in most cases are liable to ejectment arbitrarily after service of notice under section 49. This was intended for preventing the transfer of lands by way of lease permanently so that raiyats may not lose any of their lands for good. But why should the raiyats now lose all their rights for nothing, and the superior landlords would not lose but rather gain, as it is proposed to provide that occupancy rights of under-raiyats will no longer be protected interests? On this point my definite proposal is that after 12 years' possession an under-raiyat will acquire occupancy right on payment of 3 years' rent as fee to his landlord, and those who have acquired the right by custom should not be deprived of that right and it should remain a protected interest. It seems quite unreasonable that the transfer fee in case of under-raiyats should be less than Rs. 25 per cent. The percentage should be equal.

Clause 31.—I strongly object to the repeal of section 50(2). It will be quite unfair to the tenants of districts in which the record-of-rights has not been prepared.

Clause 43.—I object to proviso (*ii*) providing interest at 12½ per cent. after decree.

Clause 58.—Section 88 should be amended providing facilities for subdivision of tenancies and division of rent at the discretion of court and

(2) ought to, *(a)* rectify any defect that may be found to exist in the provisions of the Act, *(b)* regulate the customs and usages that are found to exist and help their healthy growth and development for the welfare of the people of the soil; and *(c)* confer new rights required for their protection and welfare, and suited for the growing needs and conditions of the time and locality.

The present amendment should follow these lines.

2. Since the Permanent Settlement, the Tenancy legislation in Bengal has adopted the *khudkast* raiyat as the principal figure and his rights or customary rights as the principal feature, both forming the basis for consideration. The counterpart of the *khudkhasta* is the *paikhasta*. These two terms correspond to the Bengali terms used in Rangpur and its neighbouring districts, বসত প্রজা and উঠক প্রজা that is, tenants settled on the very land and cultivating, and tenants coming up from another village and cultivating. The former had superior status and permanent settled rights while the latter had inferior status and rights of unsettled character. So far as can be gathered at this distance of time and through the various screens of legislation, the main element composing the status of a *khudkasta* raiyat or বসত প্রজা and that of a *paikhasta* raiyat or উঠক প্রজা when analysed are given below:—

THE *khudkhasta* RAIYAT OR বসত প্রজা

(1) Residence in the village.

(2) Membership in the community of the village with the rights and privileges attached.

(3) Undisturbed use and occupation of the lands.

(4) Permanency and heritability of the rights in land.

(5) Liability to pay proper rent.

THE *paikhasta* RAIYAT OR উঠক প্রজা

(1) Use and occupation of the land.

(2) Liability to pay the agreed rent.

The *paikhasta* raiyat or উঠক being a member of a different village could not be fully a member of the community of the village. Even a person could not become a *khudkhasta* raiyat or বসত প্রজা immediately on taking his residence in the village but he had to be in the village for a sufficient number of years to give satisfactory proof of his intention permanently to stay in the village and his suitability to be a member before he would become a *khudkhasta* raiyat or বসত প্রজা and be taken into the membership of the community of the village.

In the legislation undertaken subsequently to the Permanent Settlement, gradually the residential qualification was eliminated; the membership of the community of the village consequently slackened.

The two elements of the membership of the community of the village—

(a) The requisite condition of acquisition of the status—holding land for twelve years in the village, and

(b) the consequence of the acquisition of that status—that is, the acquisition of occupancy right in all the land held for the time being by him in the village as a raiyat,

now constitute the status of a settled raiyat of the village.

The first two qualifications in the raiyat were immediately followed by and had as their invariable concomitant the other three elements mentioned in the analysis. The residue of the first two qualifications now constitutes

years and secured the approval of the community the holding of a *khud-khasta* raiyat or বসত খস্তা could be transferred only under certain limitations. It seems the approval of the village community was necessary.

With the decay of the village community the arrangement for the payment of the revenue was changed, every raiyat being held more or less severally liable for the revenue. In the Permanent Settlement the zamindar was declared to be the actual proprietor of the soil. He then assumed the rights and functions of the village community and turned them to his own advantage. So the approval of the village community which has been required to bring in a new-comer within the community and give the proof of his suitability to be a member was now turned to his personal gain. The zamindar's approval was now required by a person to come into the possession of certain lands, whether the villagers would like him to come or not, and given on payment of a *nazar* or on proof of security of the rent. So the suitability of a person to be a member of the village community was turned by the zamindar into suitability of a person to be a raiyat on or by payment to the zamindar of a desired sum of money.

It is to be noted here that the villagers had thus been divested of a substantial right much needed for their convenience and welfare in consequence of the Permanent Settlement, and the Government ought, in the words of Lord Ripon, "to restore to the raiyats" at least "something of the position which they occupied at the time of the Permanent Settlement" in this respect.

So the right of pre-emption, if allowed, should be allowed to the villagers. The villagers purchasing lands in the village should be exempted from the payment of the landlord's fees, *i.e.*, they should not be required to purchase from the zamindar that very approval which they used to give about the time of the Permanent Settlement. And if the approval of the villagers is made to be required for an outsider to take land in the village, the *mahajan* who appears to be an object of so much fear in the discussions, may get a check. But the last is a matter of serious consideration.

For some time after the Permanent Settlement, the lands were abundant while the cultivators were few, and the zamindar had to remain satisfied with little when a person took lands on settlement or on transfer from another person. Sometimes a nominal *nazar* in token of submission to his authority was accepted as sufficient. But as time went on and with the growing increase of the population, demands for lands went on increasing, the zamindar's demand for *nazar* on settlement or transfer also went on increasing. And now the demand has grown almost unbearable in many localities. It is now the duty of the Government to check the increase and fix a limit and regulate the payment of the *nazar* and restore to the villagers something of their former position indicated above. And this is what should be done by the amendment. But the draft bill, while paying attention to the advantages of the zamindars, ignores completely the former position and convenience of the villagers.

I think there should be only one mode of assessment of *nazar* on transfer, the maximum rate of *nazar* and not an inflexible one should be fixed and no pre-emption should be allowed to the landlord. I have dealt with all questions in connection with transfer of occupancy holdings in my notes on Clause 22.

The right of pre-emption as it is called should not be allowed to the landlord. It is a false hope that the zamindars by the exercise of the prerogative will keep off the money-lender and have the land for the cultivators only. For to the landlord (the zamindar) the money-lender with his very long and weighty purse is the most desirable person and the best friend on earth. He can pay or lend as much as the landlord (the zamindar) requires.

The landlord (the zamindar) should not get the right to avoid the under-raiyat on pre-emption. It will be hard on the under-raiyat and lead to many underhand and unjust dealings to avoid the under-raiyats.

7. In all trees the raiyat should have full right. If the zamindar should get a share of the price of some trees, the trees should be mentioned by name. Any description such as "valuable for its timber" will only lead to friction and oppression. Permission to fell trees and appropriate the,

Owing to the bilateral or dubious character such tenants should be called bilateral or dubious tenure-holders. Such tenants should not be classed as raiyats because the interest of their under-tenants and also their own may be affected.

So the tenure-holder should be classified as—

(*i*) Tenure-holder including—

(*a*) permanent tenure-holder,

(*b*) non-permanent tenure-holder,

(*c*) bilateral or dubious tenure-holder.

It is to be noticed here that incidents of temporary tenure-holder have not been determined. And the only sections that have any application to temporary tenure are section 66 and section 167. The application of sections 6, 7 and 8 to temporary tenure is doubtful.

The character of temporary tenure-holders is similar to those of the non-occupancy raiyats and some provisions similar to those of Chapter VI, and conformable to the nature of non-permanent or temporary tenure, should be made in a separate chapter.

Sub-clause (*ii*).—All the words towards the end of the clauses (*a*) (*b*) and (*c*) beginning with the word " whether " should be omitted.

These words are misleading and make the classification confusing and over-lapping each other and very clumsy.

(*a*) A raiyat at fixed rate cannot be a non-occupancy raiyat.

The right of a raiyat at fixed rate is " to hold land at the fixed rent or at the fixed rate of rent in perpetuity ". It is, therefore, heritable and permanent, so the occupancy right is there and only the rent is fixed, which is more.

If the interest of the raiyat at fixed rate is held voidable by a purchaser in execution of a decree for its own arrears of rent this does not take away the permanency and heritability which are the essential characteristics of occupancy right. It was under a wrong impression as to the nature of the right of a raiyat at fixed rate or without consideration of the nature, that he has been held to have no occupancy right and to be not an occupancy raiyat. The wrong impression should be removed.

Nor can the annulment under section 167 of a raiyat's or an under-raiyat's interest on sale in execution of a decree for rent of the superior tenancy be any longer said to destroy the conception of occupancy right or the occupancy right itself. The committee have been able to conceive and confer the occupancy right on some under-raiyats only against the immediate landlord. This means that on sale of the superior tenancy in execution of a decree for rent thereof the under-raiyat's interest though with occupancy right will be annuled under section 167.

(*b*) An occupancy raiyat cannot hold at fixed rate. The moment he is given the right to hold at fixed rate he goes up to the class (*a*), *i.e.*, becomes raiyat at fixed rate.

(*c*) The non-occupancy raiyat cannot hold at fixed rate.

The non-occupancy raiyat cannot hold for more than twelve years, his rent then can be fixed only for a period less than twelve years, *i.e.*, not in perpetuity.

At the end of the term of his lease, he may be ejected under section 44 or section 46. If he holds beyond twelve years, he becomes an occupancy raiyat and is then liable to pay a fair and equitable rent under section 24.

From what is shown above it appears that the idea of the right of occupancy is a confused one, confused with the status of the occupancy raiyat which means a bundle of rights and privileges almost inseparately connected and conceived with the subject of it. Define and conceive the right of occupancy as an abstract quality apart from its subject, the conception becomes clear and by application of that conception one can easily find out which of the several kinds of tenants has that right of occupancy and which has not.

A tenancy of two hundred bighas or somewhat more wholly under cultivation of the tenant for a good many years past can safely be said to be held for cultivating purposes.

So from the course of dealing with a tenancy one can safely infer the original intention of the parties and the nature of the tenancy.

The course of dealing as a means of ascertaining the original nature and intention of a grant has got juristic recognition. "It may be shown by evidence as to the nature of the enjoyment what a grant in its origin was. This is in fact only an application of the general maxim *optimus interpres rerum usus*." It was followed in Nidhi Krishna Basu *v.* Nistarini Dasi (21 W. R. 386) also in Haridas *v.* Upendra Narayan Shaha (10 C. W. N. cxxviii).

So it is clear the existing circumstances at the time of the creation of a tenancy as also the course of dealing therewith give good light enabling one to have a clear sight of the original purpose and the nature of tenancy. One refusing to use such a light shuts one's eyes against the light which shows the thing. If a person uses a presumption however lawful to the neglect of such a light he places an opaque disc between the light and the thing perceivable with that light and only pretends to see by refusing to see.

Much of the rights and liabilities of tenants depend on the determination of their status and if we refuse to use the means available for such determination we refuse to do justice to them and that to the loss of their tenderly cherished rights. So the two sub-clauses proposed ought to be added to sub-section (*4*).

Section 5, sub-section 5.—Sub-section (*5*) of section 5 should be repealed.

The presumption raised by the sub-section is an arbitrary one and in effect takes away much of the rights from and causes great hardship upon the tenants.

The original tenant when he first took settlement of a tenancy much exceeding a hundred standard bighas might have been in a position to employ a score of labourers or might have had a score of partners or ভাগিয়ার or আধিয়ার। each using three or four ploughs and would require (at the rate of five acres per plough or *hal* as is the measure in Jalpaiguri) lands in area far exceeding one hundred standard bighas—say three hundred bighas. Besides a cultivator might take lands a large portion of which he would choose to keep fallow, he might require some lands also as pasture for grazing cattle. In times fifty or sixty years before, the number of cultivators was few and lands were abundant and every man kept land much more than what he could cultivate by himself or members of his family, or by hired labourers or with the aid of partners. Actually there are persons who cultivate in the manner described above lands in area far exceeding one hundred standard bighas. And to give effect to the presumption raised by sub-section (*5*) to the neglect or to the ignorance of those facts is a serious injustice and a great prejudice to the rights of the tenants.

A man took settlement of three hundred bighas of lands for direct cultivation. He cultivated some of the lands, some lands he kept to allow as pasture ground for his cattle. He cultivated the remainder by himself and three or four members of his family and with the aid of seven or eight partners, employing say fifteen *hals*, so calculating at the rate of 5 acres or fifteen bighas for each *hal* (that is the rate in the district of Jalpaiguri) twenty ploughs take the whole of the three hundred bighas of lands. There are actually a good many of such holdings and cases of cultivation.

Now many years after the question of status is raised. The court is bound to make use of the presumption of sub-section (*5*) of section 5, whether the whole land is still under similar cultivation or partly under cultivation and partly under tenants or wholly under tenants. The tenant cannot show the original deed and is determined to be a tenure holder. Then the question arises whether he is a permanent tenure-holder. As he cannot show the original deed he is determined to be a temporary tenure-holder, thereby losing his occupancy right in the lands and becoming liable to be ejected under section 66 or some other provision of the Act, and his interest is liable or to be annulled under section 167. Even if he is determined to be a permanent tenure-holder his rent becomes liable to enhancement under section 7,

(4) So the sub-section (2) is redundant and if sections 20 and 21 be transferred to Chapter II the necessity of reference for a raiyat at fixed rate to Chapter V is altogether avoided.

2. (1) The rent-free holdings stand on similar grounds with the fixed rate holdings. In the former case the rent is fixed to an amount which is nil; in the latter, the rent is fixed to an amount which is certain. In both the cases the rent is fixed to an unalterable amount in perpetuity.

In the case of rent-free holdings the right of occupancy is explicitly recognised, in the case of fixed rent holdings the right is there and should be explicitly recognised.

(2) The modes of transfer in both the cases are similar also.

For the above reasons the section 26J dealing with transfer of rent-free holding should be transferred here as section 18I This will avoid much confusion and the clumsy mention of the rent-free holding in sections 26 and 26G.

Clause 18, section 19.—A verbal change is necessary. In sub-section (*1*) of section 19 the words "this Act .... 1917" should be "this Act as amended by the Amending Act of 1922."

The present Amending Act should be referred to.

Clause 21, section 23A.—(*a*) The raiyat should have full right in all the trees in his holding, or (*b*) if that is not acceptable and the zemindar should get a share of the price of the timber only of certain trees, viz., sal, sisu and sagoon, the trees should be mentioned by name and not by description.

2. It seems that the intention of not allowing the raiyat to cut down trees seems to be to prevent him from mercilessly cutting down trees in his holding and then abandoning it and thus impairing the value of it.

The land had then no value, the raiyat's interest was doubtful, lands were plenty and the raiyats might leave one holding for another. The fruit trees, specially the mango and kantal trees, were much valued for their fruit and tempting. And so to retain the value and the tempting character of the holding those trees were not allowed to be cut down. But the circumstances have changed now. The lands are not much available, the raiyat's interest is certain and he has an interest to keep the trees standing, as that will add to the price. There is no necessity of protection of trees, and the raiyat should have full right in trees.

3. Already raiyats have full right in trees in many localities, and this right should in no way be disturbed.

4. Where zamindar's permission for cutting trees is necessary permission is asked for different kinds of trees in different localities. In Rangpur permission is necessary hardly for any other kind of trees than sal, sisu, sagoon, mango and kantal. No permission is necessary for cutting jam trees, tal trees in Rangpur and Dinajpur. Nowhere the right of the raiyat should be disturbed. As to the share to be paid to the zamindar the maximum should be fixed, as the rate of *nazar* for trees varies in different localities.

5. The pecuniary gain for trees to the zamindar is very trifling but for matters concerning trees the friction and animosity between the raiyat and the landlord's *amlas* particularly is very great. The landlord's *amlas* often tax for cutting even a small branch of a tree. If the full right in trees is recognised to be in the raiyat or in case of that not being acceptable, if the zamindar is given a share the maximum of which is not more than four annas in the rupee of the price of the timber of a certain trees mentioned by name, then a good deal of trouble is avoided.

Clause 22, section 26B.—The words "and bequeathed" should be added after the words "capable of being transferred", to make the meaning clear and bring the wording of this section in line with the wording of section 11.

Section 26D.—The relinquishment or surrender by a Hindu widow only accelerates the succession to the reversioner and should be included in the term succession as in the explanation to section 13, and be exempted

market value of the holding, the purchaser should also be given that right, as the market value is taken as the standard on which the *nazar* is to be assessed, and as in auction sale the price fetched is sometimes lower and sometimes higher than the market value.

The proviso might affect the decree-holder or the judgment-debtor in the execution case in which the holding is sold. Suppose a holding is sold in execution of a decree at Rs. 20, and the landlord within one month of getting notice applies, under this proviso, to fix the market value of the holding. The market value is found to be and fixed at Rs. 200. The judgment-debtor comes six months or a year after and applies to set aside the sale on the ground of fraud, collusion or material irregularity in the publication of the sale proclamation, and points to the value settled in the proceedings under the proviso. The sale is set aside which affects the decree-holder, the purchaser and to certain extent the landlord also. The landlord, if dissatisfied with the low price may demand and realise *nazar* according to the other mode.

It is most desirable that the payment of landlord's fee on transfer should as far as possible be settled by the party themselves without reference to courts. Here the payment of the landlords' fees may be left as a matter to be settled by the parties themselves, the Court conducting the sale being required to serve notice of the transfer upon the landlord and to decide any dispute in other respects that may arise.

Clause 22, section 26G.—The relinquishment or surrender by a Hindu widow in favour of the reversioner, as also gift by one to his immediate heir, should be exempted from the operation of this section. (*See* my note on section 26D.)

1. The right of pre-emption or of post-emption should not be given to the landlord.

(*1*) The landlords want it as a safeguard against—

(*a*) undesirable persons coming in.

(*b*) under-valuation.

(*a*) As to avoiding undesirable persons I may ask, who are the undesirable and who are the desirable persons? A tenant who is already in the estate and passes to be a good one is certainly not an undesirable person. The zamindar if required will himself give him a very good character certificate but yet the prerogative is to be exercised against him. The truth has been said by a landlord himself that the chief value of pre-emption was to guard against under-valuation. The zamindar did not in fact lay great weight upon it as a safeguard for keeping out undesirable persons coming in as long as any persons paid the *salami*.

(*b*) So the value of the prerogative of pre-emption or post-emption is admitted to be not as against the undesirable person, as in fact there are no such persons in the eye of the zamindar if he can pay the money but against under-valuation. A highly cultured gentleman's remark to this was: "If it was the main object of the pre-emption clauses it would be an advantage to cut them out altogether, and to give the zamindar a right of appealing to the court on the ground of under-valuation in every case of transfer".

We think this is the proper course and this should be adopted. There will then be one procedure to be followed.

2. There are some other reasons against this prerogative of pre-emption.

(*a*) By the exercise of this prerogative the landlord will be able to avoid any person. So the intending purchaser does not know and cannot be sure whether he will finally have the lands. By purchase he takes an uncertain right and he is unstable till the period of two months passes and the landlord does not exercise that right. This uncertainty and the consideration of the troubles and worries will deter the intending purchase. So the demand of land will be much spoiled and the value of land will be much reduced.

(*b*) The zamindar and the *amlas* now finding themselves free from the burden of getting the purchaser ejected by suit will laugh and threaten exercising the right of the so-called pre-emption, and will try to exact as

Section 26J.—The section 26J should be transferred to Chapter IV, below section 18, for reasons stated there.

Section 26K, Sub-section 2.—A clause should be added to the effect that in sections 26J and 26G the term transfer does not include (*a*) relinquishment or surrender by a Hindu widow to the reversioner which is included by the term succession, or (*b*) gift by one to his immediate natural heir.

(For reasons see my note on section 26D.)

Section 26K, Sub-section 3.—The consideration money should not be deemed to include all the sums due at the date of sale on account of mortgage of the land transferred but only such sum due on account of mortgage which has been paid or agreed to be paid by the purchaser. The reasons are : (*a*) Some mortgages which might not have been known at the time of sale and were not taken into consideration might be known thereafter which, if included into the consideration, the amount may rise to an amount which is far in excess of the market value of the holding sold. (*b*) Sometimes the dues on simple mortgage are very large, the creditor out of pity to the debtor remits the large portion of the dues and takes in satisfaction of the remaining sum by purchase a holding worth only a very small portion of the whole dues, say one fourth. In all such cases if the consideration money is to include the whole amount of debt on mortgage it will be great hardship on the raiyat and the purchaser. The pity which is so soothing and so favourably inclined to come forward to the rescue of the helpless debtor, and which a liberal creditor is naturally inclined to show to him, will feel very shy to rise and act or will not arise and act at all in the mind of the creditor, however liberal he might be.

In the proceedings of the 18th August the principle accepted about payment of the mortgage debt or arrears of rent was the same but it was applied in case of arrears of rents and not in case of mortgage dues.

Clause 23, section 36.—The words "from the date for the decree" should be "from the date on which, by the decree, the enhancement commences to take effect." Section 154 provides for the date on which the enhancement is to take effect. There should be a rest of full fifteen years.

Clause 25, section 40.—The proceeding under this section should be in the hands of the Civil Courts except where settlement of rent is being made under Chapter X in which case it should be in the hands of the Revenue Officers.

Clause 25, Sub-section (5).—In case of (*a*) and (*b*) the Court should not allow consideration. The produce is required as necessaries of life and if the produce rent is commuted into money rent, great hardship will be caused to the landlord. If the landlords are widows or other helpless persons, the hardship will know no bounds.

Clause 25, Sub-section (6).—If the application is unopposed the Court or Officer entertaining the application must be fully satisfied that the notice under sub-section (*4*) was duly served.

Clause 25, Sub-section (8).—In determining the amount of premium the principle—that the amount of premium should not be more than fifteen times the annual rent settled under sub-section (*6*)—should be discarded ; the words towards the end of the sub-section (*8*) beginning with the words "but the amount" should be omitted.

(1) The principle objected to involves the unreasonable principle that the higher the rent settled the higher the premium, or that the lower the rent the lower the premium, that the court is allowed to pay. On the other hand the court settling the rent under section (*6*) and determining the premium under sub-section (*8*) would be disposed to see, and justice requires it, that if the rent is high the premium should be low and if the rent is low the premium should be high. This places the matter in easy balance.

But the balance is much disturbed if the principle objected to is adopted. Take for instance the case as follows—Commutation of rent for 2 bighas of land is applied for. The market value of the land is Rs. 100. Having regard to all the circumstances if the Court settles the rent at Rs. 10 then the premium the Court may allow is not more than Rs. 150, but if it settles the rent at Rs. 4 the premium the Court may allow is Rs. 60.

Clause 42, section 67.—The section should remain as it is now.

(1) In all suits except the mortgage ones the original rate of interest ceases on the date of the institution of the suit, *i.e.*, on the date when the matter is placed into the hands of the court. In the mortgage suits the original rate continues during the period of litigation and some months after the decree which is allowed by the court as a period of grace. The court has the special power of allowing grace but beyond that period, the original rate ceases to run. In the rent suits the court has no power to allow any time of grace. So the rent suits are placed in the same position as all other suits and the original rate of interest must cease to run on the date of institution of the suit.

(2) During the period of litigation the matter is placed by plaintiff himself into the hands of the court and the court should determine what interest is to be paid.

(3) It is said that it is the duty of the tenant to pay and if he makes a default, he must take the consequence. But this duty is not a speciality in case of rent and the tenant takes the consequence as he pays at the rate of 12½ per cent. up to the date of the institution of the suit by which the plaintiff landlord takes the matter into the hands of the court.

(4) The raiyat does not pay generally because he has no power to pay. The higher rate will not increase his power to pay but only add to his burden. Had the tenant power to pay he would not like to keep the burden over his head though the interest is lower.

(5) It is said that if a lower rate of interest is allowed he will deliberately put off payment and if the rate is higher he will hasten to pay. But it is to be seen the landlord may execute the decree at any time he likes and if he gets a higher rate of interest he will put off execution of the decree and by the accumulation of interest put a heavy pressure on the tenant to his ruin.

(6) So it is not reasonable to add to the burden of the raiyat by allowing interest at 12½ per cent. till the date of realization.

Clause 43, section 68.—The new proviso should be taken away.

(1) The damage is awarded for the tenant's neglect or refusal to pay the rent without any reasonable and probable cause. The court has then to consider the causes or circumstances leading towards the neglect or refusal to pay. The raiyat might be very poor and in dire circumstances and may not afford to pay; or the landlord or his *amlas* might have done something such as a demand for some extra payment or enhancement of rent which contributed or led to the neglect or refusal to pay. The court has to take all the facts and circumstances into consideration and after weighing their effects to determine the amount of damage. This discretion of the court cannot with justice be restricted as it is proposed to be done by clause (2) of the second proviso.

(2) Besides damages and interests are two alternative questions. The landlord by choosing to demand damages does by necessary implication relinquish his right to interest. So he should not be allowed to have the interest in an indirect manner nor should he be allowed to demand both interest and something over and above interest. And this is virtually what is proposed by the second proviso.

Clause 44, section 69.—Experience has shown that the power given to the landlord to have order of appraisement or division of crops made by the Collector is much abused by unscrupulous landlords. To satisfy a grudge by oppressing or tyrranising a poor tenant such landlord sometimes induces the police officers by bribes falsely to report that there is a great likelihood of breach of peace which cannot be avoided except by an order under section 69. Sometimes such landlord has recourse to these sections against poor tenants who pay money rent or even where there is no relationship of landlord and tenant inducing the police to report as above. So some provision should be made to the following effect and added to section 69, as sub-section *(5)*.

"(5) The Collector before making order under this section or where for some reasons the order has already been made, shall, at the instance of any party or on his own motion or on any information received as the case may be, enquire into and satisfy himself as to whether—(*a*) the relationship

Here only the joint tenants and not the co-sharer tenants who have their liability separated should be made jointly and severally liable.

Clause 94, section 148A.—The co-sharer landlord who may institute a suit under the section 148A must be defined. A joint landlord should not be allowed to sue for rent under section 148A.

To be entitled to sue under section 148A a co-sharer must show that his collections are separate and distinct from other co-sharers.

This is a section enabling the co-sharer landlord to bring a suit for his share of rent. His share must be defined and definitely known to the tenant. The Eastern Bengal section 148A made use of the words "where a co-sharer landlord who is entitled to sue for his rent separately" deliberately and the reason is obvious.

A co-sharer landlord who is entitled to sue for his rent separately should be defined as a co-sharer landlord whose collection of rent from tenants is separate and distinct.

A joint landlord should be defined as landlord whose collection of rent from tenants is joint.

Clause 94, section 148A, sub-section (8).—The sub-section (8) provides for the realisation of rent by means of a suit for money by landlords who dip not join as co-plaintiff under section 148A. The landlords who have big shares are generally kind to tenants and would allow some time for payment but the smaller co-sharers are rather impatient and bring suit against the tenant more often than the larger sharers. If the recovery of rent is barred fully on a co-sharer landlord not joining as a co-plaintiff it would compel all the other co-sharers to join in the suit, so the poor raiyat is deprived of any consideration that might have been shown to him by others and that is to ruin.

Clause 101, section 160, sub-section (2) of draft bill.—As has been shown in notes on clause 6, section 4 and clause 14, section 18, all the raiyats at fixed rate have occupancy right in the holding as their rights are permanent and hereditary. Their holding should be protected interest. If this sub-section is being enacted "in order to prevent a purchaser from being defrauded by an outgoing tenure-holder or proprietor giving *mokarari* right on an unduly small rent on payment of a premium" then, as the clause takes away the right of fixity of rent from all raiyats at fixed rent all the *bonâ fide* tenants are made to suffer for the fault of a few.

The cases of fraud are very few as no tenure-holder or proprietor would like to allow any person to hold at fixed rate at a low rent. If there are some special favourites their number is very few. For these very few all the raiyats at fixed rate ought not to suffer.

The cases of fraud by outgoing tenure-holders or proprietors must be of very recent date, *i.e.*, a few years before they actually go out but for them the people who are holding for 50 or 60 years or even a century ought not to suffer. Only fraudulent tenancy at fixed rate created two years before going out may be treated in the manner prescribed by this new sub-section.

It was under wrong impression of the character of the tenancy that the raiyat at fixed rate was held not to have occupancy right and his interest not to be a protected interest. This wrong impression is to be corrected by declaring explicitly that the raiyats at fixed rate have occupancy right.

Clause 105, section 167.—The notice under the section 167 should be served through the Court by which the holding was sold. This will be a more convenient procedure and will have the advantage that report of the service of the notice will form part of the execution record.

Below clause 107, section 172.—The section 172 provides that an inferior tenant may deposit into Court the money due under the decree and prevent sale of the superior holding and then deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord if he is not the defaulter may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord and so on until the defaulter is reached.

The right is given to the inferior tenant for the protection of his own interest but no mode of work has been laid out. So the right given is

Note by M. Fuzlal Haq.

I have gone through the minute of dissent recorded by Mr. Syed Erfan Ali, Rai Saheb Panchanan Barman and others. I agree generally with the observations contained in this note of dissent. My difference with them lies in some minor points of detail, but I do not consider this difference sufficiently vital to necessitate a fresh note of dissent from me. I sign the report subject to these observations.

and should acquire occupancy status in any land which they may subsequently hold under a zamindar or proprietor. As a matter of fact this is the practice and no such distinction is made or understood in the country, as the present law indicates.

Section 20(3).—The words "or as an under-raiyat" may be inserted in this sub-section also after the word "raiyat."

Section 20(4).—The words "or as an under-raiyati holding" and "or as an under-raiyat" may be inserted in this sub-section respectively after the words "holding" and "raiyat."

Section 20(5).—The words "or an under-raiyat" may be inserted after the words "as a raiyat."

Section 20(6).—The words "or an under-raiyat" may be added after the words "if a raiyat."

Section 20(7).—The words "or as an under-raiyat" may be inserted in this sub-section after the word "raiyat."

Clause 22, Section 26 G (1).—The right of pre-emption should not exist in the case where the purchase by third person is in execution of a decree for arrears of rent or of a mortgage decree where the landlord is the mortgagee. These two should be added to the other exceptions in 4th line of section 26 (*G*)(*1*).

In the case of purchases by one of the several co-sharer landlords who is the mortgagee and at whose instance the holding is sold, the other co-sharer landlords should have a right to pre-empt. Otherwise in many East Bengal districts, where a rich co-sharer is also the *mahajan* and lends out money to his tenant will in time come into possession of most of the raiyat-holdings in exclusion of other co-sharer landlords. This is undesirable, and I think the co-sharer landlords in such a case should have a right to pre-empt.

Section 26H.—There are many under-raiyati holdings not held on a temporary lease and which possess *bonâ fide* occupancy rights created after 1914. Under clause (*1*) all such tenancies will be left entirely at the mercy of colluding raiyats and landlords. The agreement that raiyats will avoid transfer fee by first sub-letting and then settling does not apply to under-raiyats already created when there were no provisions in law for the payment of landlords' fees or the exercise of the right of pre-emption. Such an argument may apply to tenancies created after the passing of the amendment Act. I therefore propose to amend clause (*1*) as follows :—

"(*1*) the tenancy of such under-raiyat or his predecessor in interest was created after 1st November 1922 or created under a temporary lease after the 31st day of December 1914; and—"

Clause 28, Section 48.—This section as drafted gives the under-raiyat a better right than the raiyat so far as the acquisition of occupancy right is concerned. A person who is not a settled raiyat will not acquire occupancy right in it if he takes a land from a proprietor or tenure-holder, but he would do so if he takes it under a raiyat. To remove this anomaly I suggest the addition of the words: "who are settled raiyats of the village or have held land in the village for 12 continuous years" after the words "all under-raiyats" in section 48.

Section 75.—The reason why in spite of the penalty section the *abwab* is, if at all, on the increase, is that the tenants very seldom put the law in motion by complaint.

No power has been given to the Collector or Revenue Officer to take action on his own initiative in the case of realization of *abwab*, and although inquiries are constantly made by Collectors and Settlement Officers on tour, they are powerless to prevent these illegal exactions as the tenant will not help them by coming forward to complain. If the tenant is sufficiently strong and can successfully resist the undue claim of the landlord, he is not ordinarily made to pay any *abwab*; those who pay are generally the weak who cannot contest the illegal imposition in a court of justice. It is not reasonable to think that a tenant who is too weak to resist the illegal demand of the landlord will subsequently have the courage to bring a suit against him in court. The Behar and Orissa bill contains a similar proposal.

Clause 66, section 102(c).—Under this clause it is compulsury to enter in the record-of-rights one or more of the boundaries of each plot. Formerly all the four boundaries used to be given in the *khatian*. From experience it was found that more than 50 per cent. of these entries were wrong in the final record due to corollary corrections not having been properly made at the subsequent stages in accordance with the changes in the names of actual possessors. These wrong entries were the source of much litigation. Subsequently it was decided to give only two boundaries; and this again was reduced to the present practice of recording only the northern boundary in our record. This entry of northern boundary has no practical utility, as it does not help identification and has only been retained to comply with the compulsory provision in section 102(*c*). A lot of time and trouble will be saved if we do away with the writing of this boundary. A large staff had to be maintained to check the northern boundary against the map and *khatian* plot by plot, and even then mistakes were not rare. I strongly advocate the discontinuance of the practice of writing the northern boundary. But this cannot be done unless the words "and one or more of the boundaries" be deleted.

Clause 90, section 146 B.—I object to clause (*3*) of this section including the proviso. The idea embodied here specially that of giving money compensation will be unacceptable to the tenants generally and will lead to fraud and collusion. There are many cases where a small co-sharer in a holding is a thorn in the side of the bigger co-sharer who wants to buy him up or secure the whole holding. It will be very easy for such bigger co-sharers to collude with the landlord and get the entire holding sold.

I agree to sub-sections (*1*), (*2*) and (*4*) but not to sub-section (*3*). I am willing to give a landlord the benefit of a rent decree in every case to the extent of the share purchased. There is a theoretical objection to this that the landlord when he gets khas possession becomes a joint possessor with the remaining tenants, but there is nothing unusual in this. The landlord can have khas possession by a partition.

I propose that sub-section (*3*) of 146 B. be expunged.

Paper No. 6.

Letter No. 502, dated the 18th December, 1922, from the Second Presidency Magistrate, Northern Division, Calcutta.

Paper No. 7.

Letter, dated the 18th December, 1922, from the Honorary Secretary, Central National Muhammadan Association.

Paper No. 8.

Letter, dated the 20th December, 1922, from the Secretary, District Bar Association, 24-Parganas, Alipore.

In reprinting the Bill, all changes made by us, have been underlined.

We have considered carefully the various opinions sent in, practically all of which are in favour of the principle of the Bill. Certain proposals have been made that the Bill should be a temporary measure, say, for three years. We are against this for the obvious reason that, if the Act succeeds, its very success could militate against its extension as it would then be contended that the need for the Act had ceased. But on its lapsing the goondas would come back again, and they would then have a long period of uncontrolled activity before public opinion forced the Government again to take special action.

There is a general consensus of opinion in favour of extension of the same procedure as is applied to Calcutta to the neighbouring industrial areas, in which the goondas also work. We have, therefore, provided for this by including in the area covered by the main provisions of the Bill, the more thickly populated thanas in the districts of the 24-Parganas and Howrah. It may be necessary to apply the Act also to the riparian and other industrial areas of the Hooghly district, and we propose that the Local Government shall have a power to extend according to requirements the main provisions of the Bill to any area within these three districts. In areas outside the jurisdiction of the Commissioner of Police it is necessary that the powers, vested in the Commissioner under the Bill, be vested in the District Magistrate, and we have tried to do this in a way that will avoid any conflict of jurisdiction.

A definition of "Bengal" has been inserted for clearness and to carry out the intention of the Bill. The definition of Commissioner of Police has also been re-drafted.

The definition of "goonda" has been very carefully considered. We are advised that the various suggestions made in favour of an exhaustive definition are based largely on an apprehension that the provisions of the Act may be applied to "political offenders." This is not the intention of the Bill and the procedure which we have suggested, under which the papers of the case are to be examined by two experienced advising Judges, seems to us the surest safeguard against any such misapplication. The term "goonda" also is well-known in popular parlance and admits of little misconception. We have further confined the provisions of the Bill by the insertion of the words "against person or property" after the words "a non-bailable offence" in clause (*i*) of sub-section (*1*) of section 3. With these safeguards we do not think that there is any reasonable apprehension that the law may be misapplied. At the same time we have examined the various definitions suggested and find them all open to serious practical and legal objections particularly those which introduce the word "habitual". We think that the present definition is a clear indication of what is intended and we are not in favour of altering it.

THE GOONDAS BILL, 1922;

(as amended by the Select Committee).

[NOTE.—The amendments made by the Select Committee have been underlined.]

BILL

to provide for the control of certain goondas residing in, or frequenting Calcutta or the neighbourhood of Calcutta, and for their removal elsewhere.

WHEREAS it is expedient to provide for the control of certain goondas within Calcutta and the neighbourhood of Calcutta and to provide for their removal elsewhere in certain circumstances;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section *(3)* of section 80A of the Government of India Act to the passing of this Act; 5 & 6, Geo V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title and local extent.

1. *(1)* This Act may be called the Goondas Act, 1923.

(2) It extends to the whole of Bengal.

Definitions.

2. In this Act—

(a1) "Bengal" means the Presidency of Bengal, as constituted on the first day of April, 1912;

(1) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908; Ben. Act IV of 1866 Ben. Act II of 1866. XV of 1908.

(2) "Commissioner of Police" means the officer vested with the administration of police in Calcutta under the Calcutta Police Act, 1866, the Calcutta Suburban Police Act, 1866, the Calcutta Port Act, 1890, and any Act amending any of these Acts;

(3) "goonda" includes a hooligan or other rough;

(4) "neighbourhood of Calcutta" means the areas included in—

(a) the police-stations of Baranagore, Nawapara, Dum-Dum, Tollygunj, Behala, Metiaburj, Bhangore, Tittaghar, Khardah and Budge-Budge in the district of the 24-Parganas;

(*Clause 5.*)

(*2*) The advising Judges shall consider in camera the report and the other facts and circumstances, if any, adduced before them by the Local Government, and any representation, submitted to them by the person against whom the report has been made within the time fixed by section 4 or such further time as they may allow, and shall call for such further information, if any, as appears to them to be necessary for the purpose of tendering their advice on the report. They may also, if they think fit, give to the person against whom the report has been made an opportunity of appearing in person before them to offer his explan[illegible] and may at the instance of that person require the attendance of any other person, whose statement may support that explanation:

Provided that—

(*a*) nothing in this section shall be deemed to entitle the person whose case is before the advising Judges to appear or be represented before them by pleader, nor shall the Local Government be so entitled,

(*b*) the advising Judges shall not disclose to the person in question any fact the communication of which might endanger the safety of any individual, and

(*c*) the advising Judges shall not be bound to observe the rules of evidence and shall not permit the putting of any question which may endanger the safety of any individual.

(*3*) Any statement made to the advising Judges by any person other than the person whose case is before them shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code, and the advising Judges shall for the purpose of securing the attendance of any person under the provisions of sub-section (*2*) have all the powers of a District Magistrate under the Code of Criminal Procedure, 1898.

XLV of 1860.

V of 1898.

(*4*) When the advising Judges have reached their conclusions, they shall report the same in writing to the Local Government.

(*5*) If the person whose case is under their consideration claims, when submitting his representation or when appearing before the advising Judges, that both he and his father were born in Bengal, the advising Judges shall give him an opportunity of establishing his claim, and shall also give to the Commissioner of Police or the District Magistrate, as the case may be, an opportunity of rebutting the same, and at the time of submission of their report to the Local Government shall record their opinion as to

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

No. 53L., dated Calcutta, the 6th January, 1923.—The following report of the Select Committee on the Amendment to the Standing Orders of the Bengal Legislative Council, 1920, is hereby published for general information :—

Report of the Select Committee appointed to consider the amendments to the Bengal Legislative Council, 1920, Standing Orders, suggested by Professor S. C. Mukherji and Shah Syed Emdadul Haq.

Present:

The Hon'ble Mr. H. E. A. Cotton, *President*.
Babu Surendra Nath Ray, *Deputy-President*.
Mr. R. H. Langford James.
Mr. A. Marr.
Dr. Hassan Suhrawardy.
Shah Syed Emdadul Haq.
Babu Indu Bhushan Dutta.
Professor S. C. Mukherji.
Mr. S. M. Bose.
Mr. Syed Erfan Ali.

We, the undersigned members of the Select Committee appointed to consider the amendments to the Standing Orders suggested by Professor S. C. Mukherji, M.L.C., and Shah Syed Emdadul Haq, M.L.C., have considered the same, and our recommendations in respect thereto are as follows :—

AMENDMENT OF STANDING ORDER 6(*1*) [SECTION 19(*1*)].

We consider that the amendment of Standing Order 6(*1*) [Section 19(*1*)] should run as follows :—

" At the end of Standing Order 6(*1*) [Section 19(*1*)] the following shall be added, *viz.*—

' except in the case of any resolution on which a member has indicated his first priority and which remains undisposed of at the end of a session. Such resolution shall, if the member who has given notice of it intimates in writing before the holding of the ballot for the next session his desire to proceed with it, be carried over to the next session and shall, together with any amendments thereto of which notice has been given, be set down for discussion for such day or days as are available for non-official business in the order in which it stands and shall be given precedence to the resolutions to be balloted for for that session. The order of priority as settled by the ballot is final.' "

One member of the Committee considered that it would be preferable to add some provision that certain " important " resolutions should be given some special preference in the rules. The remaining members of the Committee considered that with reference to resolutions the order of the ballot should be strictly adhered to, subject to the carrying over of first priority lapsed resolutions in the manner indicated in the main amendment under discussion.

AMENDMENT OF STANDING ORDER 7(*2*) [SECTION 20(*2*)].

" After the words ' from time to time ' in Standing Order 7(*2*) [Section 20(*2*)] the following shall be added, viz.—

' except as provided in sub-section (*1*) of Standing Order 6.' "

The Committee unanimously accepted this amendment as being consequential to that agreed upon.

Note of Dissent by Shah Syed Emdadul Haq.

From the concluding portion of page 2, *i.e.*, from " Amendment of Standing Order 12 [Section 24]. . . . ." to the last, I dissented wholly from the number of questions and resolutions being limited; but since the majority are in favour of (such) limitation, it is necessary that there should be a rule that not more than this fixed number of 12 valid questions and three valid resolutions at the least shall be admitted. As objection regarding this will not prove effective, I express my strong dissent from the present proposal against notices of more than 12 questions and three resolutions being allowed to be sent in. I propose that not more than 12 questions and three resolutions shall be accepted. For, on many occasions, numerous questions and resolutions are rejected. It may be objected that it is in order to reduce work that this rule is being framed; if the rule about valid questions and resolutions is made, work will be increased by a member sending in repeatedly too many questions and resolutions. But careful consideration will easily show that if the first 12 questions and three resolutions are accepted as valid, no matter how many questions and resolutions in excess he may send in, there would be no need to pay any attention to them. If by chance, two or three are rejected, only then will it do, if two or three resolutions and questions left over and following the 12 questions and three resolutions, are treated as valid. In spite of the fact that there is no such rule of limitation in the Council of State, the Legislative Assembly, and other Provincial Legislative Councils, this principle is being applied to the comparatively advanced Bengal Council. In these circumstances, it would be a narrow policy to deprive the members of the opportunity of sending in 12 valid questions and three valid resolutions; it is not proper to expect increase of work (in consequence). Examples may be adduced of resolutions, after acceptance and inclusion in the agenda paper after ballot, being disallowed and expunged by Government. As regards questions also, almost more serious difficulties than this exist. Very many questions are disallowed, though framed with the utmost care. Very often questions are disallowed on the ground that it is not within the jurisdiction of this Government or department or Member or Minister, or some such other ground. The Assam-Bengal Railway is under the control of the Bengal Government. For this reason answers to questions (relating to it) are available. But questions relating to the police (of this railway) are disallowed on the ground that this department is subject to the Assam Government. Far from the member knowing of such things, it is doubtful if even the Secretary of the department could at first realize it. This can be shown by the report of the correspondence on this subject. The question about Jagabandhu Das has been disallowed in Council because it relates to a matter subject to the High Court, but the High Court has written to say that it is a matter under the control of Government. There are many examples like this to adduce. Very often the fact of disallowance of questions and resolutions in Council is communicated at a time when there is no time left again to notify questions for the same session.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

drainage scheme is under preparation, and with its rapidly growing income it is not improbable that the municipality will be able to carry out this scheme within the next few years, and that in view of the present financial position of the Corporation and the burden which will be thrown on them by the amalgamation of Manicktala, it is doubtful whether they will find it possible to carry out any scheme of improvement in Cossipore-Chitpore within the next few years. We desire to point out that it is a far cry between the preparation of a scheme of drainage and its actual execution, and the mere fact of the Cossipore-Chitpore Municipality having a drainage scheme under preparation affords very little ground for satisfaction or hope. A very rough estimate prepared by the Corporation engineers places the estimate for draining two-thirds of Cossipore-Chitpore at Rs. 36 lakhs, including half the cost of a combined outfall for both Maniktala and Cossipore-Chitpore. The arrangements in connection with the water-supply are estimated to cost about Rs. 15 lakhs for the two municipalities; it may be taken at half this figure for Cossipore-Chitpore. These two schemes alone will entail a capital outlay of half a crore, which will in turn will involve an annual recurring expenditure of 4½ lakhs in interest and sinking fund charges. The total income of Cossipore-Chitpore in 1921-22, exclusive of the opening balance of about Rs. 1¾ lakhs and certain special receipts, was Rs. 5,42,000, and even making every allowance for future growth of income, we are convinced that the municipality will not be in a position to undertake this capital outlay. As to the position of the Corporation, whatever difficulty there may be is only temporary, owing to their having on hand a large scheme for improving the water-supply; but we understand that this scheme will cost considerably less than the original estimates, by reason of the Corporation having let certain contracts at very favourable rates, and the saving effected will provide the outlay required for Cossipore-Chitpore. Further, the revenues of the Corporation are rapidly expanding, and they have an ample margin of borrowing power with which they can easily finance the loans required for improving Cossipore-Chitpore.

5. Another argument which is urged against amalgamation is that, with all the drawbacks in Cossipore-Chitpore, the death rate there is lower than is Calcutta. In our opinion the comparison is altogether fallacious, as owing to the special facilities available in Calcutta, people from all parts of Bengal come to the city for treatment and help to swell the vital statistics. A detailed analysis of the vital statistics of Calcutta to refute the above argument would be out of place here, and we would therefore only point out that in a big industrial and railway centre like Calcutta there are special factors which affect the mortality rates and which are quite unconnected with the general sanitary condition of the town. Further, a large part of the population of Cossipore-Chitpore consists of mill hands and labourers, who generally leave the place and go to their villages up-country when they get sick or become old and unfit for work. It would therefore be altogether wrong to deduce from the lower death rate of Cossipore-Chitpore that it is healthier than Calcutta, a conclusion which is contrary to actual facts and to almost universal testimony.

6. We are convinced that it would be a short-sighted policy to leave out Cossipore-Chitpore which, as in the case of the Added Area 31 years ago, is bound to be included, in its own interest, in Calcutta at no distant date. The only result of its exclusion now will be that when it comes to be taken over a considerably larger amount of expenditure will have to be incurred by the Corporation to undo the mischief that will be done in the interval. The only way to avoid this unnecessary waste of money, and to keep the cost of improvements within reasonable limits is to amalgamate it now with the Corporation.

We recommend therefore that Cossipore-Chitpore should also be included in Calcutta, subject, as in the case of Maniktala, to a statutory limit of expenditure on improvements. The area may be divided into three wards and be allotted 5 seats (*i.e.*, 3 general and 2 Muhammadan seats) as recommended by the Corporation, the total number of Councillors and Aldermen constituting the Corporation being correspondingly increased.

C. TINDALL,

Secretary to the Government of Bengal
and Secretary to the Bengal Legislative Council.

THE UNIVERSITY OF CALCUTTA AMENDMENT BILL, 1923.

A

BILL

to amend the law relating to the University of Calcutta.

WHEREAS the University of Calcutta was established and incorporated by Act II of 1875;

And whereas by Act VIII of 1904 certain alterations were made in the constitution of the said University;

Whereas it is expedient to amend the law relating to the University of Calcutta;

And whereas the previous sanction of the Governor General has been obtained under sub-section (*3*) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the University of Calcutta Amendment Act, 1923; and

(*2*) It shall come into force on such date as the Government of Bengal may fix in this behalf by notification in the *Calcutta Gazette.*

Act to be part of other Acts relating to the Calcutta University.

2. This Act shall be deemed to be part of the Acts by which the University of Calcutta was established and incorporated or by which the constitution thereof was altered.

Amendment of section 4 of Act VIII of 1904.

3. (*1*) In sub-section (*1*) of section 4 of the Universities Act, 1904, after the words "the Chancellor" the brackets, letter and words "(*b*) The Rector (The Minister of Education for the time being ex-officio Rector.)" shall be inserted.

(*2*) For clause (*e*) of sub-section (*1*) of section 4 of the same Act the following shall be substituted, namely:—

(*e*) "the Ordinary Fellows—

(*i*) elected by registered graduates,

(*ii*) elected by professors, lecturers and teachers of affiliated colleges,

(*iii*) elected by Principals of Colleges affiliated for conferment of degrees,

(*iv*) elected by University professors, lecturers and teachers,

(*v*) elected by the governing bodies of colleges,

(*vi*) elected by the Bengal Legislative Council,

(*vii*) nominated by the Government of Bengal,

THE CALCUTTA UNIVERSITY BILL, 1923.

A

BILL

further to amend the Calcutta University Act, 1857, and the Indian Universities Act, 1904.

Preamble.

WHEREAS it is expedient further to amend the Calcutta University Act, 1857, and the Indian Universities Act, 1904, so far as the Calcutta University is concerned with a view to obtain a wider constitution for that University and to provide for an improvement in the financial administration of that University;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act:

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Calcutta University Act, 1923.

Amendment of section 8 of Act II of 1857.

2. In section 8 of the Calcutta University Act, 1857, after the word "Chanceller" in the two places where it occurs, the words "Rector who shall be the Hon'ble Minister in charge of Education for the time being" shall be inserted.

Amendment of section 15 of Act II of 1857

3. In section 15 of the Calcutta University Act, 1857, for the words "such fees" the words "all fees paid to the University and all income of the University subject to any trust" shall be substituted.

Insertion of new section 15A.

4. After section 15 of the Calcutta University Act, 1857, the following shall be inserted, namely:—

Statutory Board of Accounts.

"15A. (1) There shall be appointed a Statutory Board of Accounts consisting of nine members, of whom three shall be nominated by the Local Government, three shall be elected by the University and three shall be elected by the Bengal Legislative Council.

(2) The functions of the said Board shall be—

(a) to appoint with the approval of the Local Government a treasurer to the University as well as his staff. The said treasurer shall be in charge of all monies belonging to the University and shall have the power to draw money on behalf of the University from Banks by means of cheques;

(b) to see that no money is paid which is not provided for in the budget;

(c) to compare once in every three months the actuals of the receipts and disbursements with those respectively

STATEMENT OF OBJECTS AND REASONS.

It appears from the Report of the Accountant-General (*vide* page 173 of Appendix No. 30 to the Report of the Government Grant Committee appointed by the Senate) that the deficit of the Calcutta University amounted to Rs. 38,000 in 1918-19, Rs. 1,77,000 in 1919-20 and Rs. 2,08,000 in 1920-21. The Report further says at page 171: "It may be noted here that the credit balance of Rs. 76,654 in favour of the post-graduate teaching fund, is the result of book adjustments whereby funds have been transferred from the fee fund to the post-graduate teaching fee fund, when there was no balance available from the fee fund. Ordinarily the fee fund should not show a debit balance, as transfers from that fund to other funds can only be permitted to the extent of the surplus available. The book adjustments that have been made in the accounts have the effect of giving an erroneous impression of the financial position of the two funds." This discloses a state of things regarding the administration of the University finances which can very well be characterized as lamentable. Then again, at any rate for the last few years, the University though a public body, totally disregarded the extremely salutary practice of preparing the annual Budget. The said Report of the Accountant-General says (at page 180)—"In the case of all public bodies, such as Calcutta Corporation, Calcutta Port Trust, Calcutta Improvement Trust, it is the invariable standing practice to prepare a complete estimate of all classes of receipts and expenditure on different accounts and get it duly sanctioned by proper authority before the year, to which it appertains, commences. The authorities entrusted with the expenditure know fully well beforehand what grants are placed at their disposal, and regulate their expenditure accordingly. They also closely watch the receipts and advise their superiors to take early action if there is a falling off in them. The Calcutta University on the other hand allows the expenditure to go on for months against no grant sanctioned by the Senate, and does not prepare an estimate till the year sufficiently advances. Estimate for 1919-20 was passed by the Senate on 29th November 1919, 1920-21 on 4th December 1920 and 1921-22 on 4th March 1922. Thus the expenditure up to those dates was incurred without any sanctioned grant." These and various other serious defects in the administration of the financial affairs of the University appear in the said Report of the Accountant-General. One of the objects of this Bill is to improve the financial administration of the Calcutta University.

The other object of this Bill is to introduce more of the elective element in the constitution of the Senate with due and proper regard to academic interests.

Some of the other amendments proposed in this Bill are more or less consequential.

Provision has been made to empower the Local Government to frame rules according to which only the first elections after this Act comes into force, have got to be held.

SURENDRA NATH MALLICK,
Member-in-charge.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 372 L., dated the 2nd February, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 25th January, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE BENGAL VILLAGE SELF-GOVERNMENT (AMENDMENT) BILL, 1923.

A

BILL

to amend the Bengal Village Self-Government Act, 1919.

WHEREAS it is expedient to amend the Bengal Village Self-Government Act, 1919, in the manner hereinafter appearing ; Ben. Act V of 1919.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bengal Village Self-Government (Amendment) Act, 1923.

Amendment of section 6.

2. In sub-sections (*3*) and (*4*) of section 6 of the Bengal Village Self-Government Act, 1919, hereinafter referred to as " the said Act " for the words " District Magistrate " the words " Chairman of the District Board in consultation with the District Magistrate, or some person authorised by him " shall be substituted.

Amendment of section 16.

3. In section 16 of the said Act.—

(*1*) at the end of clause (*iii*) of sub-section (*1*), the following shall be added, namely :—

" Provided that before the President is removed from office he shall be given an opportunity to explain the charges preferred against him :

Provided also that an appeal shall lie to the Commissioner of the Division against the order of removal within one month from the date of such order, the order of the Commissioner shall be final.

(*2*) in sub-section (*2*)—

(*a*) for the words " union board " in the first line of the sub-section, the words " Local Board or, if there is no Local Board, the District Board " shall be substituted,

(*b*) after the words " the members of " for the word " the " the words " a union " shall be substituted,

(*c*) for the words " its Vice-President " the words " the Vice-President of such union board " shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

It seems desirable that the amendments in the Bengal Village Self-Government Act, 1919, proposed in the Bill should be made as soon as possible.

Clauses 2 and 10.—It is most desirable to be Chairman, District Board, with the consultation of District Magistrate or a person authorised in place of District Magistrate in section 6 of the Act.

This has been provided for in clause 2 of the Bill, and also the Chairman, District Board, will be more better than the District Magistrate about the power which is written in section 40 of the Act, and clause 10 of the Bill contains also a small amendment of section 40 of the Act providing that before the District Magistrate passes orders under that section he should consider the report of the union board.

Clause 3.—It is desirable that an opportunity should be given to the President or the Vice-President of a union board who is removed from office under section 16 of the Act and it is necessary to give beforehand an opportunity to explain the charges preferred against him and to meet any charges that may have been brought against President that he should have a right of appeal and that the Local Board and if the Local Board be dissolved in future, then District Board should have the power to remove a Vice-President instead of the union board. This has been provided for in clause 3 of the Bill.

Clause 4.—In dealing with matters under section 21 of the Act, the power of union board should be increased more. An advanced provision has been made for the Bengal Village-Chaukidari (Amendment) Act, 1922. Such provision should be made for this more advanced Act as Chaukidari Act.

Clause 5.—It is considered that section 27 should include the removal of the plague of the water-hyacinth, and that this should be specifically mentioned in the Act.

Clause 6.—An amendment of section 32 has been suggested in order to provide for the engagement of the services of medical practitioners, by union board. This seems very desirable.

Clause 7.—Provides for the removal of officers and servants by union boards and gives such officers and servants the right of appeal to the District Board.

Clause 8.—If there is no holding in the union but there is estate or portion of the lands, this can be assessed according to the income derived therefrom. This kind of amendment has been added in section 37 of the Act. This has been provided for in clause 8 of the Bill.

Clause 9.—Provision has been made that a person who has lands in two or three unions his assessment should not exceed rupees 42 for each union and whose lands in four or more unions his assessment should not exceed rupees 32 for each union, and the insertion of the words "who possesses less than one and one-fourth acre of land" in sub-section (*2*) of section 38 is most desirable.

Clause 11.—Provision has been made that one-fifth of the road cess collected from each union shall be made over to the union board for works of sanitation, irrigation or education or improvement of public health.

Clause 12.—The intention of the small verbal amendment in section 58 of the Act is to make the meaning of that section more clear.

Clause 13.—This clause provides an appeal against an order by the Commissioner under section 56 or 59.

SHAH SYED EMDADUL HAQ,
Member-in-charge.

CALCUTTA;
The 1st January, 1923.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

4. The Governor in Council, before deciding to legislate or introducing any Bill in Council on the subject of *utbandi*, would be glad of the opinions of any persons interested therein on—

(1) the draft Bill annexed,

(2) the alternative proposals or any modification thereof given in paragraph 2 of this resolution, and

(3) the proposals detailed in paragraph 3 of this resolution.

All opinions should reach Government by the 1st April 1923.

By order of the Governor in Council,

M. C. McALPIN,

Secretary to the Government of Bengal.

(Clause 2.)

(*d*) the rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands under the custom of *utbandi* but whose rents have been converted into uniform annual rents whether under this section or by agreement or otherwise;

(*e*) the charges incurred by the landlord in respect of irrigation under the custom of *utbandi* and the arrangements made on settlement of the uniform annual rent for continuing those charges;

(*f*) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy raiyats;

(*g*) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(*9*) The premium to be paid to the landlord in the case of lands in which the tenant has not acquired occupancy rights shall be three times the rent, or if the application is made under sub-clause (*c*) of sub-section (*2*), three times the portion of the rent determined under sub-section (*7*) on account of such lands:

Provided that the determining officer may, on the application of the tenant, if he considers that it is a hardship to the tenant to pay a premium, commute the same by ordering that, in lieu of the payment of a premium, the uniform annual rent or portion of the rent, as the case may be, on account of the lands in respect of which the premium was so payable, be increased by a sum equal to 20 per cent. of such rent or portion of rent.

(*10*) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(*11*) The officer may, on the application of the tenant, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under subsection (*7*) takes effect and that one of remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

rents should be taken into consideration. Further, in view of the fact that *utbandi* rents are money-rents, and not the produce-rents contemplated by section 40, it is proposed in sub-section 180A (*8*) (*f*) that regard should be had to the rules laid down in this Act for the guidance of the civil courts in enhancing or reducing rents on account of the holdings of occupancy raiyats. Proposed sub-section 180A (*8*) (*g*) provides that any sum agreed to by the parties to be paid as money-rent should be taken into consideration.

Section 180A (*9*).—It is proposed, in order to simplify the procedure, that the premium should be a fixed multiple of the rent. For the present three times the rent has been inserted in the Bill. As, however, the compulsory payment of a premium might prevent raiyats applying for conversion, it is proposed, where it would be a hardship on the tenant to pay a premium, that he should in lieu thereof pay an additional sum of 20 per cent. to be added to the rent determined for the land in which he has not acquired occupancy rights.

Section 180A (*11*).—For similar reasons it is proposed that the premium should be made payable in instalments not exceeding three.

Section 180A (*12*).—This sub-section makes the premium payable and recoverable as rent.

Section 180A (*13*).—This sub-section provides for appeals.

Section 180A (*14*).—This prevents the proceedings under this section being upset in any way, except as provided by the section.

Section 180B.—It is proposed that when an *utbandi* rent has been converted into a uniform annual rent for any lands, such lands should cease to be deemed to be held under the custom of *utbandi*, and the raiyat should hold them as an occupancy raiyat.

returned from a mixed electorate represent the Muhammadan interest in the Corporation? Separate representation by a mixed electorate is a contradiction in terms. It is said that representation by a separate electorate is inconsistent with the ideal of self-government. But it must be remembered that the analogy of other countries is not applicable to India on account of its special circumstances. India is not England or America. It is the only country in the world where there are people of different races and religions, having sharply divided religious, social and political interests. An Indian nation cannot be built in a day. We will have to proceed slowly and cautiously. So whatever may be the condition elsewhere, there can be no doubt that the separate electorate system must continue in the local self-governing bodies for years to come. Then the idea of communal representation by a mixed electorate is also against the principle of self-government, but the same has been accepted in view of the special circumstances of India. The principle of special representation by a separate electorate has been accepted so far as the European community is concerned. Again, the strongest point in favour of a separate Muhammadan electorate is that the provincial Moslem League has all along urged that the Muhammadans should have communal representation by a separate electorate in all local self-governing bodies. That the Moslem League is the only association which really represents the views of the Muhammadan community cannot be gainsaid, in view of the fact that the Congress accepts the League as the only Muhammadan association with which there should be a pact for reforms in India.

Again, the number of seats for Muhammadan Councillors is inadequate. It is very difficult to understand on what basis the number of seats has been allotted to the Muhammadans. In order that the representation of the Muhammadans may be adequate and effective the number should be increased at least to 33 per cent. of the elected members. In this connection I may be permitted to mention that for the United Provinces the Legislature has sanctioned a similar principle.

Clause 388, sub-clause (2)—should be altogether omitted. The Corporation cannot have such wide powers. It affects the religion and religious rites of the Muhammadans and unless the Governor-General has given his consent such a provision cannot be inserted. As regards the economic aspect of the question it is known to everybody that the number of cattle is not decreasing. It is the quality that has deteriorated. Further the provision, if passed into law, will defeat its object.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

(*Clause 6.*)

such house, room or place to discontinue such use within a period of seven days.

(*5*) The direction of the Commissioner of Police that a house, room or place is used in any manner, or for any purpose, described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*) shall be final, and the legality or propriety thereof shall not be questioned in any trial or judicial proceeding in any Court.

[*Cf.* s. 48A, Calcutta Police Act.]

(*6*) Whoever, after an order has been passed against him by the Commissioner of Police under sub-section (*2*) or sub-section (*4*) or by a Deputy Commissioner of Police under sub-section (*2*) and confirmed under sub-section (*3*), uses, or allows to be used, any house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to twenty-five rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to three months in addition to, or in lieu of, any fine imposed.

[*Cf.* s. 48B, Calcutta Police Act.]

(*7*) Whoever, after an order under sub-section (*4*), uses or allows to be used, any house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to fifty rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to six months in addition to, or in lieu of, any fine imposed.

(*8*) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, against the lessee, tenant or occupier of which an order has been passed directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on the business of a common prostitute, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

Removal and disposal of minor girls found in brothels, etc.

6. (*1*) The Commissioner of Police, or a Deputy Commissioner of Police, or a police officer not below the rank of Inspector, specially authorised in writing in this behalf by the Commissioner or a Deputy Commissioner of Police, shall be empowered to enter into any brothel or disorderly house or house of assignation, where he has knowledge or suspicion, or it is reported to him, that a girl, apparently under the age of sixteen years, is living in a house of ill fame or is carrying on, or is being made to carry on, the business of a common prostitute, and shall be entitled to remove such girl forthwith from such brothel, disorderly house or house of assignation.

(*2*) A girl who has been so removed shall be brought before a Juvenile Court constituted under section 37 of the Bengal Children Act, 1922 and if the Court is of opinion that she is under the age of fourteen years, it shall cause an inquiry to be made in manner provided in sub-section (*3*) of section 27 of the Bengal Children Act, 1922, and, if satisfied that the girl should be dealt with

Ben. Act III of 1920. **2.** In sub-section (4) of section 1 of the Calcutta Rent Act, 1920, for the words "for a period of three years from the date of the commencement of the Act" the words and figures "until the end of March, 1924" shall be substituted. Amendment of section 1 of Ben. Act III of 1920.

STATEMENT OF OBJECTS AND REASONS.

Inquiry has shown that the supply of houses in Calcutta is still short of the demand and, after careful consideration, it is considered desirable to extend the present Calcutta Rent Act, 1920, until the end of next cold weather.

This Act is admittedly imperfect, but, on the whole, it has served its purpose, and as the proposed extension will be for a short period, it is not considered advisable to undertake a complete revision of the Act.

Rent control can only be justified as an emergent measure, and in introducing the Bill the Government desire to place on record their definite opinion that at the end of March, 1924 such control should finally cease.

SURENDRA NATH BANERJEA,
Member in charge.

CALCUTTA;
The 12th February, 1923.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

THE BENGAL AERIAL ROPEWAYS BILL, 1923.

A

BILL

to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal.

Preamble

WHEREAS it is expedient to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act;

5 and 6, Geo V, c. 61; 6 and 7, Geo. V, c. 37; 9 and 10, Geo. V, c. 101.

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title, local extent and commencement.

1. (1) This Act may be called the Bengal Aerial Ropeways Act, 1923;

(2) It extends to the whole of Bengal, except the Hill-tracts of Chittagong; and

(3) It shall come into force at once:

Provided that it shall come into operation in the Darjeeling district only on such date and subject to such exceptions and modifications as the Governor in Council may, by notification in the *Calcutta Gazette*, direct.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "aerial ropeway" means an aerial ropeway (or any portion thereof) for the carriage of passengers, animals or goods, and includes all posts, ropes, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to, such aerial ropeway; [Cf. Act IX of 1890, s. 3(4)(a) and (c).]

(2) "carrier" means any vehicle or receptacle hung or suspended from, or hauled by, a rope and used for the carriage of passengers, animals or goods or for any other purpose in connection with the working of an aerial ropeway;

(3) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act;

(4) "Inspector" means an Inspector of aerial ropeways appointed under this Act;

(5) "local authority" means a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, and also includes a Local Board;

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Clause 7.)

(*ii*) a time within which the construction shall be commenced;

(*iii*) a time within which the construction shall be completed;

(*iv*) the conditions under which a concession, guarantee or financial assistance may be given by the Local Government or a local authority to the promoter;

(*v*) the rights of purchase by the Local Government or by a local authority;

(*vi*) the conditions relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary;

(*vii*) the conditions relating to the construction of the ropeway over roads and other public ways of communication except such railways and tramways as are referred to in clause (*a*) of item 5 of Part I of schedule 1 to the Devolution Rules, and with the previous sanction of the Governor General in Council over such railways and tramways;

(*viii*) the conditions under which the promoter may sell or transfer his rights to the Local Government or to a local authority, company or person;

(*ix*) the conditions under which the ropeway may be taken over by the Local Government to be worked by itself or by a local authority or by a company or person other than the promoter;

(*x*) the motive power to be used on the ropeway and the conditions (if any) on which such power may be used;

(*xi*) the minimum headway to be maintained under different parts of the rope;

(*xii*) the points under the rope at which bridges or guards shall be constructed and maintained;

(*xiii*) the amount of security (if any) to be deposited by the promoter in the event of his application being granted; and

(*xiv*) such other matters as the Local Government may deem necessary.

Final order.

7. (*1*) If, after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the Local Government are of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, they may make an order accordingly.

(*2*) Every order authorising the construction of an aerial ropeway for the public carriage of passengers, animals or goods shall be published in the *Calcutta Gazette*, and such publication shall be conclusive proof that the order has been made as required by this section.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Construction and Maintenance of Aerial Ropeways for Public Traffic.—Working of Aerial Ropeways for Public Traffic.—Clauses 15-19.)

Temporary entry upon land for repairing or preventing accident.

15. (*1*) A promoter may, at any time, for the purpose of examining, repairing or altering an aerial ropeway for public traffic or of preventing any accident, enter upon any immovable property adjoining such ropeway, and may do all such works as may be necessary for such purpose.

[Cf. Act IX of 1890, ss. 9 and 10.]

(*2*) In the exercise of the powers conferred by sub-section (*1*), the promoter shall cause as little damage as possible, and compensation shall be paid by him for any damage so caused; and, in a case of dispute as to the amount of such compensation, or the person to whom it shall be paid, the matter shall be referred to the decision of the Collector.

Removal of trees, structures, etc.

16. (*1*) Where any tree standing or lying near an aerial ropeway for public traffic, or where any structure or other object which has been placed or has fallen near any such ropeway subsequently to the issue of an order under section 7 in regard to such ropeway, interrupts or interferes with, or is likely to interrupt or interfere with, the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

[Cf. Act IX of 1910, s. 18(3) and (4).]

(*2*) When disposing of an application under sub-section (*1*), the Collector shall, in the case of any tree in existence before the construction of the aerial ropeway, award to the person interested in the tree such compensation, if any, as he thinks reasonable, and the Collector may recover the same from the promoter in the same manner as an arrear of land revenue.

Explanation.—For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant.

Orders of Collector subject to revision by Local Government.

17. No suit shall lie, in respect of any matter referred to in the proviso to sub-section (*1*) of section 14, sub-section (*2*) of section 14, section 15 or sub-section (*1*) of section 16, but every order made by a Collector under any of those sections, and every award made by him under sub-section (*2*) of section 16, shall be subject to revision by the Local Government.

[Cf. Act IX of 1890, s. 10(2), and Act IX of 1910, s. 12(4).]

Working of Aerial Ropeways for Public Traffic.

Promoter may fix rates.

18. The promoter of an aerial ropeway for public traffic shall, for the purposes of working an aerial ropeway, and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix the rates for the carriage of passengers, animals or goods on the aerial ropeway.

[Cf. Ben. Act III of 1883, s. 24.]

Duty of promoter to work aerial ropeway without partiality.

19. No promoter shall, for the purposes of working an aerial ropeway for public traffic, make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in any respect whatsoever, or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

[Cf. Act IX of 1890, s. 42 (2).]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Purchase of Aerial Ropeways for Public Traffic.—Clause 25.)

due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, plant and apparatus, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking :

Provided also that there shall be added to such value, as aforesaid, such percentage, if any, not exceeding twenty *per cent.* of that value, as may be specified in the order passed under section 7, on account of compulsory purchase.

(*2*) Where a purchase has been effected under sub-section (*1*)—

(*a*) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the promoter or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(*b*) save as aforesaid, the order published under section 7 shall remain in full force, and the purchaser shall be deemed to be the promoter :

Provided that where the Local Government elects to purchase, the order under section 7 shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation.

(*3*) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the promoter by the Local Government or the local authority, as the case may be.

(*4*) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Local Government, waive its option to purchase, and enter into an agreement with the promoter for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (*1*) upon such terms and conditions as may be stated in the agreement.

Power to promoter to sell when option to purchase not exercised and order revoked by consent.

25. Where, on the expiration of any of the periods referred to in section 24, neither the Local Government nor a local authority purchases the undertaking, and the order published under section 7 is, on the application or with the consent of the promoter, revoked, the promoter shall have the option of disposing of all lands, buildings, works, materials, plant and apparatus belonging to the undertaking in such manner as he may think fit. [*Cf.* Act IX of 1910, s. 8.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Clause 30.—Chapter IV.—Offences, Penalties and Arrest.—Clauses 30, 31.

Temporary occupation of land in case of private aerial ropeway.

30. If land is to be occupied temporarily in accordance with the provisions of section 28 on behalf of the promoter of an aerial ropeway for private traffic, and if the Local Government on the application of the promoter so direct, then the provisions of Part VI of the Land Acquisition Act, 1894, shall apply to such occupation, subject to the provisions that, notwithstanding anything contained in section 35 of the Land Acquisition Act, 1894, the occupation and use by the promoter of the land occupied shall continue for such period, not exceeding ten years, as the Local Government may fix, and that the compensation to the owner of such land shall be fixed with due regard to any additional loss or inconvenience caused to him by reason of such period of occupation. I of 1894.

CHAPTER IV.

Offences, Penalties and Arrest.

Failure of promoter to comply with Act.

[Cf. Act XI of 1886, s. 27, and Ben. Act III of 1883, s. 29.]

31. If a promoter of an aerial ropeway for public traffic—

(*a*) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under section 7, or

(*b*) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of section 10, or

(*c*) fails to comply with the provisions of section 13, or

(*d*) fails to pay within a reasonable time any compensation awarded by the Collector or by the Local Government under sections 14, 15, 16 or 17, or

(*e*) contravenes any of the provisions of section 19, or

(*f*) fails to send notice of any accident as required by section 20, or

(*g*) fails to close an aerial ropeway in accordance with an order passed under sub-section (*1*) of section 21, or re-opens any aerial ropeway in contravention of sub-section (*2*) of that section, or

(*h*) continues to exercise the powers of a promoter, in respect of any aerial ropeway, in contravention of the provisions of section 22 or section 26, or

(*i*) fails to comply with the provisions of section 27 or section 36, or

(*j*) contravenes any of the provisions of section 37, or

(*k*) contravenes the provisions of any rule made under section 41,

The Bengal Aerial Ropeways Bill, 1923.

(Chapter V.—Supplementary Provisions.—Clause 41.)

(3) The Local Government, on the application of the promoter or otherwise, may declare that the provisions of section 28 and of sub-section (1) of this section shall apply to any private aerial ropeway or class of private aerial ropeways for private traffic.

Power of Local Government to make rules.

41. (1) The Local Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the powers of an Inspector appointed under section 11;

(b) the duties of the promoter's servants, police-officers, and Magistrates on the occurrence of an accident;

(c) the maximum and minimum rates which a promoter may fix under section 18;

(d) the standard dimensions and specifications with which the aerial ropeway is to conform;

(e) the manner of previous publication of by-laws made under section 27;

(f) the intervals at which a promoter shall submit returns under section 36, and the forms in which such returns shall be submitted;

(g) the preparation, submission and auditing of the accounts of the promoter:

(h) the method of arbitration for the settlement of disputes;

(i) the manner in which notices under this Act shall be served;

(j) the manner in which, and the conditions under which, the through booking of goods may be permitted between an aerial ropeway and a railway, tramway or another aerial ropeway; and

(k) the safe and efficient working of aerial ropeways.

(3) All rules made under this section shall be published in the *Calcutta Gazette.*

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to empower the Government of Bengal to authorise surveys and the carrying of aerial ropeways over private property; to provide for compensation to the owners of such property; and to ensure the safe and efficient working of the ropeways when constructed.

SAIYID NAWAB ALI CHAUDHURI,
Member-in-charge.

CALCUTTA;
The 6th January, 1923.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

No. 757L., dated the 16th March, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 14th March, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE CALCUTTA IMPROVEMENT (AMENDMENT) BILL, 1923.

A

BILL

further to amend the Calcutta Improvement Act, 1911. Ben. Act V of 1911.

WHEREAS it is expedient further to amend the Calcutta Improvement Act, 1911, in the manner hereinafter appearing ;

And whereas the previous sanction of the Governor-General has been obtained, under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act ;

5 & 6, Geo. V, c. 61; 6 & 7, Geo V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Calcutta Improvement (Amendment) Act, 1923.

Amendment of long title and preamble to Bengal Act V of 1911.

2. In the long title and in the first paragraph of the preamble to the Calcutta Improvement Act, 1911 (hereinafter called the said Act) after the word "Calcutta" the words "and the development of the suburbs and environs of Calcutta" shall be inserted.

Repeal.

3. The following portions of the said Act are hereby repealed, namely :—

"(*a*) clause (*f*) of section 2 ;

(*b*) in the heading to Chapter III, the words 'and Re-housing Schemes';

(*c*) sections 39, 40, 42, 51, 52, 66, 68 (and the sub-heading over it), 120, 121, 124, 127 and 128 ;

(*d*) in section 67, the words and figures 'or section 66'; and

(*e*) in clause (*i*) of section 171A, the words 'and, in the case of a hut, to twenty rupees', and in clause (*ii*) of that section, the words 'and, in the case of a hut, to five rupees.'"

(h) the alteration or extension of any water-mains within the said area, or the extension of any system of water-mains in neighbouring areas;

(i) the provision of such lamps, lamp-posts and other apparatus for lighting as may be required by the Corporation and as would have been supplied by them if they had constructed the said streets;

(j) the provision of such sanitary conveniences as are ordinarily provided in a municipality;

(k) the raising, lowering, or levelling of any land in the area comprised in the scheme;

(l) the formation or retention of open spaces for the purposes of recreation, ventilation or ornament;

(m) the reservation of sites for schools, hospitals asylums, markets and other charitable or public institutions; and

(n) any other matters, consistent with this Act, which the Board may think fit."

Amendment of section 45.

11. In clause (a) of sub-section (2) of section 45 of the said Act for the words "a general improvement scheme or a street scheme, as the case may be" the words "an improvement scheme" shall be substituted.

Amendment of section 47.

12. In section 47 of the said Act—

(1) to sub-section (1) the following shall be added, namely:—

"Provided that if at any time before the sanction of the Local Government is accorded under section 48, the Board propose to acquire any land not included within the notice prepared under section 43, sub-section (1), they shall first serve in respect of the said land the notices prescribed by section 45";

(2) for the words "complete plans" in clause (a) of sub-section (2) the words "preliminary plans" shall be substituted; and

(3) to sub-section (3) the words "and shall forward a copy of the said application to the Corporation" shall be added.

New section 49A.

13. After section 49 of the said Act the following shall be inserted, namely:—

Preparation of plans and estimates of cost.

"49A. (1) Before proceeding to execute any part of an improvement scheme sanctioned under section 48, the Board shall prepare complete plans and estimates of the cost of the proposed works, and shall forward a copy

Assessors of the Tribunal, the Local Government shall constitute a panel of qualified persons, of whom one-half shall be nominated by the Corporation, and may from time to time, subject to such nomination, alter or add to the membership of such panel.

(7) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, or when any member has an interest in any property in respect of which the Tribunal is to make an award, the Local Government shall forthwith appoint a person, who is on the panel constituted under sub-section (6), to be a member in his place, either for the remainder of his term of office, or for the period of his temporary absence or for the hearing of the case in respect of property in which he is interested, as the case may be:

Provided that one of the persons nominated to the panel by the Corporation shall always be appointed in place of an assessor appointed by them under sub-section (3).

(8) Notwithstanding anything contained in sub-section (1), any person appointed, temporarily, under sub-section (7) in place of a member of the Tribunal, shall continue to hold office for the purposes of any case which he has begun to hear, until the award in such case has been determined.

(9) The names of all persons enrolled on a panel constituted under sub-section (6), and all appointments made under this section, shall be published by notification."

New section substituted for section 75.

20. For section 75 of the said Act the following shall be substituted, namely:—

"75. (1) The President of the Tribunal shall, on or before the fifteenth day of January in each year, submit to the Local Government an estimate of the expenditure to be incurred during the ensuing year on account of the remuneration, prescribed under section 73 for members of the Tribunal, the salaries, leave allowances and acting allowances prescribed under section 74 for officers and servants of the Tribunal, and the rent of buildings and other necessary charges incurred by the Tribunal.

Payments by Board on account of Tribunal.

(2) The Local Government shall forward a copy of the estimate to the Board, and after considering such representations as the

Amendment of section 81.

24. For sub-section (*2*) of section 81 of the said Act the following shall be substituted, namely:—

"(*2*) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(*a*) shall give notice by advertisement in local newspapers; and

(*b*) shall offer a prior right to take on lease or purchase such land to any person or his heirs, executors or administrators, who formerly had any interest in such land and who, in the opinion of the Board, has a superior claim to such land, or if it appears to the Board that no person has such a superior claim, the Board shall put up to auction the right to take on lease or purchase such land among all persons who, previous to its acquisition, had interests in any portion of such land greater than a lease for years having seven years to run:

Provided that the prior right referred to in this clause need not be offered or put up to auction, if the Board consider that to do so would be detrimental to the carrying out of the purposes of this Act:

Provided also that before putting up to auction the right to take a lease or purchase such land, the Board may fix a minimum reserve price, below which the said right shall not be sold."

Amendment of section 82.

25. For sub-section (*1*) of section 82 of the said Act the following shall be substituted, namely:—

(*1*) The duty imposed on instruments relating to immovable property and liable to duty under the following articles of Schedule I to the Indian Stamp Act, 1899, as amended by the Bengal Stamp (Amendment) Act, 1922, namely:— II of 1899. Ben. Act III of 1922.

'Articles 23, 31, 32 (*a*), 32 (*b*) (*i*), 33, 35 [in respect of a fine or premium or money advanced for a lease], 40 (*a*) and 58A

shall, in the case of instruments affecting immovable property situated in the Calcutta Municipality and executed on or after the commencement of this Act, be increased by two per cent. on the value of the property so situated, or (in the case of a mortgage with possession) on the amount secured by the instru- [illegible] in the instrument.'"

Amendment of section 83.

26. In clause (*a*) of the proviso to sub-section (*1*) of section 83 of the said Act before the word "passenger" the words "person in military employ when travelling on duty [illegible]" shall be inserted.

(*c*) meeting all costs of framing and executing improvement schemes and re-housing schemes;

(*d*) meeting the cost of acquiring land for carrying out any of the purposes of this Act;

(*e*) meeting the cost of constructing buildings required for carrying out any of the purposes of this Act:

(*f*) making payments in pursuance of section 149, otherwise than for interest or for expenses of maintenance or working; and

(*g*) the payment of any other expenses incurred by the Board in carrying out the purposes of this Act."

New section substituted for section 125.

35. For section 125 of the said Act the following shall be substituted, namely:—

"125. Subject to the maintenance of a closing balance of one lakh of rupees, and unless the Local Government otherwise direct, the Board may invest any surplus moneys, not required for the purposes of this Act, in the manner prescribed in section 101, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act."

Investment of surplus moneys.

Amendment of section 126.

36. In section 126 of the said Act the word, figure and brackets "sub-section (*2*)" shall be omitted, and for the words "that sub-section" the words "that section" shall be substituted.

New section substituted for section 129.

37. For section 129 the following shall be substituted, namely:—

"129. The Board shall submit to the Local Government—

Submission of accounts to Local Government.

(*a*) at the end of each half of every financial year, an abstract of the accounts of their receipts and expenditure, and

(*b*) after the completion of every improvement scheme, an account of all receipts and expenditure on account of such scheme, so as to show its net and gross cost."

Amendment of section 137.

38. For clause (*4*) of section 137 of the said Act the following shall be substituted, namely:—

"(*4*) for prescribing the form of the abstracts of accounts referred to in clause (*a*) of section 129 and section 136 and of the accounts referred to in clause (*b*) of section 129."

Calcutta Municipal Bill, 1921, which is likely to come into force before the present Bill. There has been some difference of opinion between the Corporation and the Board as to the exact liabilities or obligations, which section 65 of the Act imposes upon the Board. The section has been re-drafted so as to provide for the Board supplying such lighting and water-supply adjuncts or apparatus, as the Corporation would themselves ordinarily provide in a street which they had constructed. Provision has also been made for a section of a street being made over to the Corporation under section 65 before the whole thoroughfare included within the scheme has been completed.

5. The words "authorized to acquire" in section 68 when read with section 69 are somewhat ambiguous. The two sections have been combined in one section, to show that the Board may acquire by agreement any land which they may compulsorily acquire.

6. It frequently happens that one of the assessors of the Tribunal is temporarily absent on account of illness or other unavoidable causes; it may, again, sometimes be undesirable that an assessor who is interested in any property in respect of which an order has to be made, should sit on the Tribunal when it is hearing the case. It is suggested that a small panel of qualified persons should be appointed—half of them to be nominated by the Corporation—from whom the Local Government might, without any loss of time, appoint a person to act in place of any assessor, who for one of the reasons already stated may be unable to sit on the bench. It is provided that only a member of the panel who has been nominated by the Corporation, should be appointed in place of the assessor appointed by that body.

7. At present the office rent, contingent expenses, etc., of the President of the Tribunal are paid by the Board and are audited as part of the expenditure of the Board. It is suggested that this procedure has the appearance of depriving the President of his proper independence, and it is therefore, proposed that the President of the Tribunal should each year submit to the Local Government an estimate of his expenditure, which the Local Government may sanction with such modifications as they think necessary, after considering any representation which the Board may make. The Board would then be required to make payments from time to time to the President of the Tribunal, for disbursement in accordance with the sanctioned estimates.

8. Some changes are made in section 78. At present the fees or commutation payments are payable at dates which vary according to the accident of the order in which the Collector takes up the cases; the result is that those owners whose cases are taken up first, are required to make their payments at an earlier date than the more fortunate persons, whose cases are decided later. Under the present Bill, the fee will be payable or the agreement will have to be executed, by a date to be fixed for each scheme by the Local Government, such date to be not less than 4 years from the publication of the notification under section 6 of the Land Acquisition Act. Owners will thus be in a better position to judge whether it is worth their while to pay the exemption fee; it will also be easy on or before the date fixed as above to ascertain the exact area of the land acquired and the land abandoned, which at present it is often impossible to do, as exemption fees are fixed before the line of road has been laid down on the ground. The new section 78 also leaves it open to the Board to arrange with the owner for the payment of the exemption fee by equated annual payments or otherwise; such elasticity will certainly be popular with land-owners.

9. The meaning of section 81 is admittedly uncertain. The Committee recommend that the Act should be amended so as to provide that whenever the Board decide to sell or lease any land they shall, unless they consider that to do so would be detrimental to the carrying out of the purposes of the Act, offer a prior right to take on lease or purchase such land to any person, who formerly had any interest in such land and who, in the opinion of the Board, has a preponderating claim to such land, or if it appears to the Board that no person has such preponderating claim, shall put to auction the right to take on lease or purchase such land among all persons who, previous to its acquisition, had interests in any portion of such land greater than a lease for years having seven years to run.

Clause 10.—The wording of clause (*a*) of section 41 has been altered with a view to avoid any difficulties as to the acquisition of surplus lands. In clause (*d*) the words "other than sale or hire" have been omitted, as they unnecessarily limit the operations of the Trust. The clause will now cover re-housing, and it has been amplified in this respect. The expression "poorer classes" has been used instead of "poorer and working classes" as in section 52, which is to be repealed, so as to enable the Trust to provide for the poorer *bhadralok*. Clauses (*g*), (*h*), (*i*), and (*j*) amplify the latter portion of the existing clause (*f*). Clause (*k*) corresponds to clause (*b*) in the existing section 42, which it is proposed to repeal. Clause (*l*) amplifies clause (*b*) of section 42. As regards the proposed new clause (*m*) in section 36 it is considered desirable that power be taken to reserve sites for charitable or public institutions, and it is thought that any abuse of this power, such as the allocation of a site *gratis* to a quasi-public institution, can be avoided, since the Trust will have power to refuse pre-emption under section 81 (*2*) (*b*) in cases where sites are required for public purposes. The new clause (*n*) in section 36, in regard to any other matters, is necessary.

Clause 11.—This clause contains a necessary consequential amendment in clause (*a*) of sub-section (*2*) of section 45.

Clause 12.—The new proviso to sub-section (*1*) of section 47, requires the Board to give sixty days' notice to the parties affected, in cases where modifications in a scheme involve the acquisition of properties which were not to be acquired under the original scheme. As regards the proposed amendment in clause (*a*) of sub-section (*2*) of section 47, it is considered desirable that only preliminary plans should go to Government, and that engineering details should be relegated to the detailed plans prepared after Government sanction is obtained, and be settled between the two bodies directly concerned. The amendment in sub-section (*3*) of section 47 is self-explanatory.

Clause 13.—The new section 49A provides for the preparation by the Board, of detailed plans and estimates to be submitted to the Corporation, but not to the Local Government. The provisions of the existing section 50 will prevent any extensive changes in a scheme sanctioned by Government.

Clause 14.—The alterations in the proviso to section 53 are intended to give more elasticity as to the width of streets required. It is not possible to provide 40 feet roads, nor are they necessary, *e.g.*, in areas laid out with small three *cottah* sites of which one-third remains an open space. For areas so laid out a 20 feet road is probably quite adequate, provided that sufficient 40 feet thoroughfares are provided. The existing proviso (*ii*) has been of no real practical utility, since *mehtars*' passages are not needed where there is a sewerage system. In any case the proposed proviso would meet any rare case which might occur.

Clause 15.—Legal difficulties have arisen as to the interpretation of the words "is required for executing any improvement scheme" in sub-section (*1*) of section 54. The words "for the purposes of such scheme" have therefore been used instead, which will cover acquisition for recoupment. It is considered that all land within the scheme area should be made to contribute to its cost, and that the Corporation should not receive preferential treatment in this respect over private owners. As regards the amended sub-section (*2*) of section 54 it seems desirable to provide for Government deciding any dispute, as to what is required for the purposes of a scheme. It is proposed to omit the word "actual" before the word "loss" in sub-section (*1*) of section 54 because it is considered that except in the case of municipal streets and squares required for executing any improvement scheme, the Corporation should receive the actual market price of the property it surrenders, but the word "actual" has a tendency to limit or restrict the word "loss", and is unnecessary.

Clause 16.—It has been provided that the provisions of sub-section (*8*) of section 63, are not to apply to a hut.

Clauses 17, 18, 19, 20, 21 and 24.—The alterations proposed in sections 65, 69, 72, 75, 78 and 81 are indicated in paragraphs 4, 5, 6, 7, 8 and 9, respectively, of the Statement of Objects and Reasons.

THE CALCUTTA PORT (AMENDMENT) BILL, 1923;

(as amended by the Select Committee).

[NOTE.—All alterations made by the Select Committee have, so far as possible, been underlined.]

A

BILL

further to amend the Calcutta Port Act, 1890.

Preamble.

WHEREAS it is expedient further to amend the Calcutta Port Act, 1890, in the manner hereinafter appearing; Ben. Act III of 1890.

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act; 5 & 6, Geo. V, c 61; 6 & 7, Geo. V, c 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Calcutta Port (Amendment) Act, 1923.

New sections 24B and 24C.

2. After section 24A of the Calcutta Port Act, 1890 (hereinafter called the said Act), the following shall be inserted, namely:—

"24B. (1) The Commissioners in meeting may, from time to time, set aside such sums out of their revenue surplus, as they think fit, as a reserve fund or funds for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, ship-wreck or other accident or for any other emergency arising in the ordinary conduct of their work under this Act:

Establishment of reserve fund.

Provided that the sums set aside as a reserve fund or funds shall not exceed such amount, annual or in the aggregate, as shall from time to time be prescribed by the Local Government.

(2) Such reserve fund or funds may be invested only in the promissory notes and other securities of the Government of India, or in the debentures issued by the Commissioners under this Act."

"24C. (1) For the purposes of any investment which the Comissioners are authorised to make by this Act, it shall be lawful for the Commissioners in meeting to reserve and set apart any debentures or securities to be issued by them on account of any loan to which the approval of the Local Government has been given:

Power to reserve debentures or securities for Commissioners.

(Clauses 7, 8.)

(*b*) any sum or sums on any object not included in or estimated for in the estimate, if and when such sums can be met from ascertained savings on the estimate as a whole:

Provided that in pursuance of the provisions of this clause—

(*i*) not more than fifty thousand rupees shall be expended on any one object, and

(*ii*) without the sanction of the Local Government, not more than one lakh and fifty thousand rupees shall be expended in any one year.

The Commissioners shall submit annually to the Local Government a statement of all such expenditure.

New section substituted for section 73.

7. For section 73 of the said Act, the following shall be substituted, namely:—

Adherence to estimate.

"73. Subject to the provisions of section 72A, no sum exceeding twenty thousand rupees shall, except in cases of pressing emergency, be expended by, or on behalf of, the Commissioners unless such sum is included in an estimate at the time in force which has been finally approved by the Local Government."

Amendment of section 74.

8. In section 74 of the said Act, for the words "five thousand rupees" the words "twenty thousand rupees" shall be substituted.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

3. The Bill was published in English in the *Calcutta Gazette* of the 21st March, 1923.

4. We do not consider that the Bill has been so altered as to require re-publication.

5. We recommend that the Bill, as amended by us, be passed.

SAIYID NAWAB ALI,
Member in charge.

G. G. DEY.

T EMERSON.

A. CHAUDHURI.

SYED NASIM ALI.

H. E. SKINNER.

T. C. CRAWFORD.

W. L. CAREY.*

NOTE.—* Signed subject to any amendments which the Member may later decide to bring forward.

CHAPTER V.

SUPPLEMENTARY PROVISIONS.

The Bengal Aerial Ropeways Bill, 1923.

(*Chapter II.—Procedure and Preliminary Investigations.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Clauses 5, 6.*)

(*e*) a statement of the maximum and minimum rates which it is proposed to charge ;

(*f*) such maps, plans, sections and drawings in connection therewith as the Local Government may require in order to form an idea of the proposal.

Preliminary investigations.

5. Subject to the provisions of this Act, and of section 4 of the Land Acquisition Act, 1894, the Local Government may, at their discretion, accord sanction to the intending promoter to make such surveys as may be necessary, and require him to submit such detailed estimates, plans, sections and specifications and such further information as they may deem necessary for the full consideration of the proposal. I of 1894.

The intending promoter shall not be entitled to claim any compensation from Government for any expense incurred under this section in the event of his application being ultimately refused.

Orders authorising the Construction of Aerial Ropeways for Public Traffic.

Order authorising construction and contents of such order.

6. (*1*) The Local Government may, on application made by any intending promoter, and after due consideration of the details supplied in accordance with section 5, publish in the *Calcutta Gazette* a draft of the proposed order authorising the construction by or on behalf of, such promoter, subject to such restrictions and conditions as the Local Government may think proper, of an aerial ropeway within any specified area or along any specified route—

(*a*) for the public carriage of passengers ;

(*b*) for the public carriage of passengers, animals and goods ; or

(*c*) for the public carriage of animals and goods.

(*2*) A notice shall be published with the draft order stating that any objection or suggestion which any person may desire to make with respect to the proposed order, if submitted to the Local Government within such period, not being less than two months from the date of such publication as may be specified in the notice, will be received and considered.

(*3*) The Local Government shall also cause public notice of the intention to make the order to be given at convenient places within the said area or along the said route, and shall, so far as may be conveniently possible, cause a like notice to be served on every owner or occupier of land over which such route lies, and shall consider any objection or suggestion, with respect to the proposed order, which may be received from any person within the date specified in such notice and decide thereon. [*Cf.* Act I of 1894, s. 9.]

(*4*) The draft of the proposed order may specify—

(*i*) a time within which the capital required for the construction of the aerial ropeway shall be raised ; [*Cf.* Act XI of 1886, s. 7.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Inspection of Aerial Ropeways for Public Traffic.—Construction and Maintenance of Aerial Ropeways for Public Traffic.—Clauses 11-14.)

Appointment and duties of Inspector.

11. (*1*) The Local Government may appoint such persons as they deem fit to be Inspectors of aerial ropeways for the public carriage of passengers, animals or goods, and may fix the fees to be charged to promoters for the performance by Inspectors of their duties under this Act. [*Cf.* Act IX of 1890, s. 4.]

(*2*) It shall be the duty of any such Inspector from time to time to inspect such ropeways, and to determine whether they are maintained in a fit condition and worked with due regard to the convenience and safety of the persons using them and of the general public, and consistently with the provisions of this Act.

Powers of Inspectors.

12. An Inspector shall, for the purpose of any of the duties which he is authorised or required to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and shall, for that purpose, have such powers as may be prescribed. [*Cf.* Act IX of 1890, s. 5.] Act XLV of 1860.

Facilities to afforded Inspector.

13. The promoter, and his servants and agents, shall afford to an Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act, or by rules made thereunder. [*Cf.* Act IX of 1890, s. 6.]

Construction and Maintenance of Aerial Ropeways for Public Traffic.

Authority of promoter to execute all necessary works.

14. (*1*) Subject to the provisions of this Act, and, in the case of immovable property not belonging to the promoter, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a promoter of an aerial ropeway for public traffic may— [*Cf.* Act IX of 1890, s. 7.]

(*a*) make such survey as he thinks necessary ;

(*b*) place and maintain posts in or upon any immovable property ; [*Cf.* Act XIII of 1885, s. 10, first para.]

(*c*) suspend and maintain a rope over, along or across any immovable property ;

(*d*) make such bridges, culverts, drains, embankments and roads as may be necessary ; [*Cf.* Act IX of 1890, s. 7(*a*), (*d*) and (*f*).]

(*e*) erect and construct such machinery, offices, stations, warehouses and other buildings, works and conveniences as may be necessary ; and

(*f*) do all other acts necessary for constructing, maintaining, altering, repairing and using the aerial ropeway :

Provided that a promoter may take any action under clause (*b*) or clause (*c*) of this sub-section, notwithstanding the objection of the owner or occupier of the property affected thereby if the Collector, by an order in writing, permits such action. [*Cf.* Act IX of 1910, s. 12(*2*), first proviso.]

(*2*) When making an order under the proviso to sub-section (*1*), the Collector shall fix the amount of compensation or of annual rent or of both which should, in his opinion, be paid by the promoter to the owner of the property affected thereby, or, in the case of immovable property, to the owner or occupier thereof. [*Cf.* Act IX of 1910, s. 12(*3*).]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Discontinuance of Aerial Ropeways for Public Traffic.—Purchase of Aerial Ropeways for Public Traffic.—Clauses 23, 24.)

for three months, discontinued the working of the ropeway or of any part thereof, without a reason sufficient, in the opinion of the Local Government, to warrant such discontinuance, the Local Government, if they think fit, may declare that the powers of the promoter in respect of such aerial ropeway or part thereof shall be at an end; and thereupon the said powers shall cease and determine.

Power of removal of aerial ropeway on cessation of promoter's powers.

23. (*1*) When a declaration has been made under section 22, in respect of any aerial ropeway or of any part thereof, an officer appointed in that behalf by the Local Government may, at any time after the expiration of two months from the date determined as aforesaid, remove such aerial ropeway or part thereof, as the case may be ; [*Cf.* Ben. Act III of 1888, s. 89.]

and the promoter shall pay to the officer so appointed such costs of removal as shall be certified by that officer to have been incurred by him.

(*2*) If the promoter fails to pay the amount of costs so certified within one month after the delivery to him of the certificate or of a copy thereof, such officer may, without any previous notice to the promoter and without prejudice to any other remedy which he may have for the recovery of the said amount, sell and dispose of the materials of the aerial ropeway or part thereof so removed;

and may, out of the proceeds of the sale, pay and reimburse himself the amount of costs certified as aforesaid and of the costs of the sale ;

and shall pay over the residue (if any) of such proceeds to the promoter.

Purchase of Aerial Ropeways for Public Traffic.

Power of Local Government and local authorities to purchase aerial ropeways for public traffic.

24. (*1*) When an order under section 7 has been made in favour of a promoter of an aerial ropeway for public traffic, not being the Local Government, or a local authority, the Local Government, or a local authority specified in the order published under section 7, shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in such order, have the option of purchasing the undertaking, and if the Local Government, or the local authority with the previous sanction of the Local Government, elect to purchase, the promoter shall sell the undertaking to the Local Government or to the local authority as the case may be, on payment of the value of all lands, buildings, works, materials, plant and apparatus of the promoter, suitable to, and used by him for the purposes of, the undertaking, such value to be in case of difference or dispute determined by arbitration : [*Cf.* Act IX of 1910, s. 7.]

Provided that the value of such lands, buildings, works, materials, plant and apparatus shall be deemed to be their fair market value at the time of purchase,

The Bengal Aerial Ropeways Bill, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Clauses 28, 29.)

CHAPTER III.

Private Aerial Ropeways for certain purposes.

Application for acquisition of land in case of certain private aerial ropeways.

28. Where the Local Government are satisfied that the construction, extension, working or management of an aerial ropeway for private traffic is likely to prove useful to the public by reason of its facilitating the transport of commodities of general utility or required for the conservation of undertakings supplying those commodities, and where the intending promoter of such aerial ropeway is desirous of obtaining any land for the purpose of such construction, extension, working or management, the Local Government may, on the application of such promoter, acquire on his behalf such land under the provisions of Part VII of the Land Acquisition Act, 1894, or procure the temporary occupation of the same under the provisions of Part VI of that Act, whether the said intending promoter is or is not a company as defined in that Act. I of 1894

Agreement.

29. (*1*) No order shall be made by the Local Government under section 28 until an inquiry has been held as hereinafter provided and the intending promoter has entered into an agreement with the Government in respect of the matters mentioned in sub-section (*4*).

(*2*) Such inquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(*3*) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court. Act V of 1908.

(*4*) Such officer shall report to the Local Government the result of the inquiry, and if the Local Government are satisfied that the ropeway is or is likely to be useful to the public, they shall, subject to any rules made under section 41, require the intending promoter to enter into an agreement with the Government, providing to the satisfaction of the Local Government for the following matters, namely :—

(*a*) the terms on which the ropeway shall be held by the promoter ;

(*b*) the time within which, and the conditions on which, the ropeway shall be constructed, maintained and used.

(*5*) Every such agreement shall, as soon as may be after its execution, be published in the *Calcutta Gazette*.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter V.—Supplementary Provisions.—Clauses 36—40.)

CHAPTER V.

Supplementary Provisions.

Returns.

36. A promoter of an aerial ropeway for public traffic shall, in respect of such ropeway, submit to the Local Government returns of capital, receipts and traffic at such intervals and in such forms as may be prescribed. [*Cf.* Act IX of 1890, s. 52.]

Protection of roads, railways, tramways and waterways.

37. No promoter of an aerial ropeway shall, in the course of the construction, repair, working or management of such ropeway, cause any permanent injury to any public road, railway, tramway or waterway, or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway, tramway or waterway. [*Cf.* Act IX of 1910, s. 81.]

Acquisition of land by a promoter.

38. The Local Government may, if they think fit, on the application of any promoter of an aerial ropeway for public traffic desirous of obtaining any land for the purpose of constructing, working or managing such ropeway, direct that he may, subject to the provisions of this Act, acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the promoter were a company. [*Cf.* Act IX of 1910, s. 57(*2*).] I of 1894.

Limitation of claims for damage to animals or goods.

39. No person shall be entitled to a refund of an overcharge in respect of animals or goods carried by an aerial ropeway for public traffic or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the promoter within six months from the date of the delivery of the animals or goods for carriage by the ropeway.

Application of Act to certain private aerial ropeways.

40. (*1*) Sections 1, 2, 11, 12, 13, 14, 15, 16, 20 and 21, clauses (*c*), (*f*), (*g*), (*j*) and (*k*) of section 31, sections 34, 35 and 37, and sub-sections (*1*) and (*3*) and clauses (*a*), (*b*), (*d*), (*dd*), (*i*), (*k*), (*l*), and (*m*) of sub-section (*2*) of section 41 shall also apply to the private aerial ropeways constructed for the purposes referred to in section 28, whether constructed before or after the commencement of this Act:

Provided that, in the application of section 16 to any such aerial ropeway, for the words "the issue of an order under section 7" the words "the opening of the ropeway to traffic or the issue of a notification for the acquisition of, or an order for the temporary occupation of, land in accordance with the provisions of section 28, whichever is earlier," shall be deemed to be substituted.

(*2*) Clauses (*a*), (*c*) and (*e*) of sub-section (*1*) and sub-section (*2*) of section 10 shall also apply to all such private aerial ropeways constructed after the commencement of this Act, and clause (*b*) of section 31 shall apply to such ropeways to the extent that section 10 applies thereto.

(*Clauses 3, 4.*)

rate and the taxes for the said year for the said purposes shall be levied and imposed shall be determined and fixed, and the sums of money, if any, that shall be borrowed in the said year for the said purposes shall be determined, in the manner set forth in sections 3 to 5.

Preparation of Budget Estimate and reference to General Committee.

3. (*1*) The Budget Estimate of income and expenditure for the year 1924-25 of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, shall be prepared with reference to the area specified in Schedule I to that Act and for the purposes of that Act, by the Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and the said Chairman shall, on or before the tenth day of January, 1924, place the same, together with a statement of proposals as to the taxation which it will, in his opinion, be necessary or expedient to impose under the Calcutta Municipal Act, 1923, in the year 1924-25, before the General Committee of the Corporation of Calcutta, as constituted under the Calcutta Municipal Act, 1899.

Ben. Act III of 1923.

Ben. Act III of 1899.

For the purposes of this Act, the General Committee of the Corporation of Calcutta shall, notwithstanding anything contained in the Calcutta Municipal Act, 1899, include the following additional members, namely:—

(*a*) three Commissioners of the Cossipur-Chitpur Municipality, elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924;

(*b*) two Commissioners of the Maniktala Municipality, elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924; and

(*c*) two Commissioners of the Garden Reach Municipality, elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924.

(*2*) The General Committee, as so constituted, shall, on or as soon as may be after the tenth day of February, 1924, consider the estimates and proposals submitted by the Chairman of the Corporation and subject to such modifications and additions therein or thereto as they may think fit, shall prepare a Budget Estimate of income and expenditure of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, for the year 1924-25, and shall propose the levy of the consolidated rate and other taxes for that year at such rates as they may deem necessary.

Passing of Budget Estimate, etc.

4. The Budget Estimate, as finally framed by the said General Committee, together with a statement of proposals as to the taxation which it will, in the opinion of the General Committee, be necessary or expedient to impose under this Act in the year 1924-25, shall be placed before the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, on or before the seventh day of March, 1924, and the said Corporation shall consider, on behalf of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, the said proposals of the General Committee, and in so doing shall apply thereto the provisions of the Calcutta Municipal Act,

STATEMENT OF OBJECTS AND REASONS.

It has been represented that the immediate levy under the Calcutta Municipal Act, 1923, of the consolidated rate at the full percentage on lands and buildings in the areas newly added to Calcutta may cause hardship to the inhabitants of those areas. It is therefore considered that special provision should be made in respect of the consolidated rate that may be levied from those areas during the five years 1924-25 to 1928-29. During the first year (1924-25) it is proposed that the total amount of the consolidated rate to be levied in respect of any one of these areas shall not exceed the sum total of the rate on holdings, the latrine fees, the water rate and the lighting rate levied in respect of the area during the year 1923-24. During the succeeding four years it is proposed that the Corporation do have a discretion to reduce, in respect of any of the added areas, the percentage fixed for the year for the purposes of the levy of the consolidated rate on lands and buildings in Calcutta generally.

It has also been represented that the provisions of the Calcutta Municipal Act, 1923, in regard to the framing of the first Budget so far as that Budget relates to the areas newly added to Calcutta, are insufficient, and that difficulty may arise in regard to the collection of the consolidated rate and taxes for those areas, and that the added areas are entitled to some sort of representation at the time of the framing of the Budget for the year 1924-25. Provision has therefore been made for the preparation of the 1924-25 Budget Estimates of the Corporation of Calcutta by a Special Committee, on which three representatives of the Cossipore-Chitpur Municipality and two representatives of the Maniktala and the Garden Reach Municipalities shall sit together with the members of the General Committee of the Calcutta Corporation. The Budget Estimate as so prepared will be placed before the Corporation and the seven members aforesaid will be added to the Corporation for the purposes of the discussion and passing of the said Budget and the fixing of the consolidated rate and taxes.

In order that the preliminary draft of the Budget for 1924-25 and other preliminary work in connection with the inclusion of the added areas may be undertaken in good time, power is taken under clause 6 of the Bill to the Chairman and his officers to inspect and take extracts from the assessment books and other records relating to the added areas.

Finally, by clause 7 an amendment is made to give effect to the intention of section 20 of the Act as declared by the Hon'ble the Minister in the Council. The final draft does not carry out the intention that the minimum qualification of an elector under clause *(a)* of sub-section *(1)* of section 20 shall be the payment of twelve rupees per annum by way of consolidated rate or taxes. This has now been corrected and the opportunity has been taken to make the drafting of this clause more explicit and homogeneous.

S. N. BANERJEA,
Member in charge.

DARJEELING;
The 8th June, 1923.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

STATEMENT OF OBJECTS AND REASONS.

The Bengal Children Act, 1922, has not yet been extended to the town and port of Calcutta, the suburbs of Calcutta and Howrah, partly owing to the difficulty of obtaining certified industrial schools and partly owing to the financial stringency. There are in Calcutta already a Juvenile remand home and a Juvenile Court in which there is accommodation sufficient to provide for the requirements both of Calcutta and its suburbs, but the Government have been advised that under section 37, as at present framed, it would not be legal in view of section 177 of the Code of Criminal Procedure for the Magistrates of the suburbs, when trying offences arising within their jurisdiction, to sit in that Court, as it is outside their jurisdiction. To avoid, therefore, the large expense which would be necessary in order to create a separate Court and a remand home in the suburbs, it is proposed to take power to permit Magistrates to try within Calcutta cases against children and young persons for offences alleged to have been committed in the suburbs, such trials to be deemed to be trials in the suburbs.

2. There are some clauses in the Act which create offences against children and which will be tried by the ordinary Courts. These could be introduced at once. Other clauses give statutory powers to Probation Officers and provide for placing children and young persons in suitable custody, and these provisions also might be brought in at once. Owing to the difficulty, however, of providing or certifying industrial schools for different communities in Calcutta, it is not possible at present to permit orders to be passed sending children to industrial schools. A house for a Court and remand home has not yet been found in Howrah, and there may have to be delay in extending the Act to it. The Bill therefore provides that different parts of the Act may be brought into force on different dates for different areas, and that orders of detention in industrial schools shall not be passed in respect of any child, unless there is any industrial school certified with suitable accommodation. It is hoped that the different communities will come forward to assist Government on behalf of unfortunate children of their communities by opening industrial schools with Government aid, and thus enable Government to bring the industrial school system fully into force at an early date.

A. RAHIM,
Member-in-charge.

DARJEELING;
The 29th May, 1923.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

(*Clause 2.*)

(*d*) the rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands under the custom of *utbandi* but whose rents have been converted into uniform annual rents whether under this section or by agreement or otherwise;

(*e*) the charges incurred by the landlord in respect of irrigation under the custom of *utbandi* and the arrangements made on settlement of the uniform annual rent for continuing those charges;

(*f*) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy raiyats;

(*g*) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(*9*) The premium to be paid to the landlord in the case of lands in which the tenant has not acquired occupancy rights shall be three times the rent, or if the application is made under sub-clause (*c*) of sub-section (*2*), three times the portion of the rent determined under sub-section (*7*) on account of such lands:

Provided that the determining officer may, on the application of the tenant, if he considers that it is a hardship to the tenant to pay a premium, commute the same by ordering that, in lieu of the payment of a premium, the uniform annual rent or portion of the rent, as the case may be, on account of the lands in respect of which the premium was so payable, be increased by a sum equal to 20 per cent. of such rent or portion of rent.

(*10*) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(*11*) The officer may, on the application of the tenant, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (*7*) takes effect and that one of remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1363L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce and pass the Bill at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923 :—.

THE BENGAL SMOKE-NUISANCES (AMENDMENT) BILL, 1923.

A

BILL

further to amend the Bengal Smoke-Nuisances Act, 1905.

Preamble.

WHEREAS it is expedient further to amend the Bengal Smoke-Nuisances Act, 1905, in the manner hereinafter appearing; (Ben. Act III of 1905.)

And whereas the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act; (5 & 6, Geo V, c. 61; 6 & 7, Geo V, c. 37; 9 & 10, Geo. V, c 101.)

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Smoke-Nuisances (Amendment) Act, 1923.

Amendment of sections 6 and 7 of Bengal Act III of 1905.

2. (*1*) To clause (*a*) of sub-section (*1*) of section 6 of the Bengal Smoke-Nuisances Act, 1905, as amended by subsequent legislation (hereinafter referred to as the said Act), the words "clamps for making bricks, or" shall be added.

(*2*) In sub-section (*2*) of section 6 and in three places in section 7 of the said Act after the word "kiln" the word "clamp" shall be inserted.

Amendment of section 10.

3. In sub-section (*2*) of section 10 of the said Act—

(*a*) the word "and" at the end of clause (*j*) shall be omitted; and

(*b*) after clause (*j*) the following shall be inserted, namely:—

"(*jj*) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and the grant of permission for the working of furnaces, flues and chimneys and generally for the services of Inspectors; and."

(*Clauses 3—5.*)

(*ii*) two persons to be nominated by the Governor of Fort William in Bengal ;

(*iii*) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta ;

(*iv*) two persons to be nominated by the vestry of St. John's Church, Calcutta ;

(*v*) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore ;

(*vi*) one person to be nominated by the Bengal Chamber of Commerce ; and

(*vii*) one person to be nominated by the Anglo-Indian and Domiciled European Association of Bengal.

(*2*) The Governors may at a meeting co-opt with themselves such persons, of either sex, being members of the Church of England, not exceeding three in number, as they may consider necessary. Such persons shall be deemed to be Governors for the purposes of this Act.

(*3*) If any of the authorities referred to in sub-clauses (*iii*) to (*vii*) of clause (*d*) of sub-section (*1*) does not by such date as may be prescribed by the Local Government nominate the Governors mentioned therein, the Local Government shall nominate suitable persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

(*4*) The names of the nominated and co-opted Governors shall be published in the *Calcutta Gazette*.

Incorporation of the Governors.

3. The Governors shall be a body corporate by the name of the "Governors of the St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Period of office of Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the *Calcutta Gazette*:

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the *Calcutta Gazette*:

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

Quorum.

5. (*1*) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

(*2*) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1364L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce the Bill and to refer it to Select Committee at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923 :—

THE ST. THOMAS' SCHOOL BILL, 1923.

A

BILL

to provide for the management and future location of the St. Thomas' School in Calcutta and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities.

Preamble.

WHEREAS it is expedient, in order to place the affairs of the St. Thomas' School in Calcutta (hitherto known as the Calcutta Free School) on a legal and stable basis, to provide for the management and future location of the said school and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act; 5 & 6, Geo V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the St. Thomas' School Act, 1923.

(*2*) This section and section 2 shall come into force at once, and the remainder of the provisions of this Act shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

CONSTITUTION.

Constitution of the Governors.

2. (*1*) The Governors of the St. Thomas' School (hereinafter referred to as the Governors) shall be—

(*a*) the Lord Bishop of Calcutta and Metropolitan of India;

(*b*) the Archdeacon of Calcutta;

(*c*) the Master of the Calcutta Trades Association for the time being, if willing to act;

(*d*) the following persons, of either sex, being members of the Church of England, namely:—

(*i*) one person to be nominated by the Governor General of India;

(Clauses 10—14.)

Power to Governors to delegate their powers and to appoint teachers and officers.

10. The Governors shall have power from time to time—

(a) to delegate, subject to such conditions as they think fit, any of their powers to sub-committees consisting of such Governors as they shall think fit;

(b) to appoint a Secretary and to fix his remuneration, if any; and

(c) to appoint such persons as they shall think fit to employ for the purposes of the school (including school-teachers, boarding-masters, matrons, sergeants, clerks, officers and servants) and to fix their remuneration.

Purposes of the St. Thomas' School

11. The purposes of the St. Thomas' School are hereby declared to be as follows and, save as is otherwise herein provided, all property vested in the Governors by or under this Act shall be deemed to be held in trust for the said purposes and not otherwise:—

(1) the maintenance of an efficient school, and

(2) the provision of a sound education, with religious instruction in accordance with the principles of the Church of England, for the children of Europeans and Anglo-Indians:

Provided that in the interpretation of the terms 'European' and 'Anglo-Indian' the Governors shall have due regard to any definition of those terms which may be included in the Code of Regulations for European Schools.

This Act not to preclude Governors from conforming to the regulations of the Local Government.

12. The Governors shall not be precluded by any provision in this Act from conforming to any regulations which the Local Government may impose as the conditions of a grant of money to the school.

MAKING OVER OF ST. THOMAS' CHURCH.

Site of St. Thomas' Church

13. The Governors are further authorised in such manner as they deem fit to make over to, and to vest in, the Lord Bishop of Calcutta and Metropolitan of India and the Archdeacon of Calcutta conjointly St. Thomas' Church and the site thereof as specified in the Third Schedule, together with such adjacent land (the property of the Governors), not exceeding in all two bighas, as they may deem to be necessary for the convenient user thereof for the purposes of the Church of England.

PROVIDENT FUND.

Power to Governors to establish a Provident Fund.

14. The Governors may, with the approval of the Local Government, establish a provident fund for the benefit of their teachers and other officers and servants (appointed in accordance with the provisions of this Act) and compel all or any of such teachers, officers and servants to contribute to, and may make supplementary contributions to, such provident fund and make payments thereout in accordance with the rules of such fund.



The Calcutta Gazette

WEDNESDAY, JULY 25, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1836L., dated the 21st July, 1923.—The following Report of the Select Committee on the Calcutta Suppression of Immoral Traffic Bill, 1923 (with the Bill, as amended by the Committee), is hereby published for general information.

that if the rescue is to be effective and the girl trained to earn a respectable livelihood she must not be cast adrift so quickly and power must be taken to continue her training, if necessary, to the age of eighteen. We have, therefore, provided that while the procedure of the Bengal Children Act shall apply, the court shall have power to direct detention until the age of eighteen years and in clause 15 we have taken power to modify the provisions of the Bengal Children Act.

Clause 7.—We consider that a girl who has been removed from a brothel or disorderly house should be kept in a suitable place other than a police-station or jail not only until she is brought before a court but until the court decides to place her in proper custody or decides to dismiss the case. We have amended the clause accordingly.

The original *clause 8* is now contained in part in the revised *clause 15* which deals with the subsequent treatment of girls on the lines already indicated.

We have considered carefully the many suggestions that have been made for checking the evil of prostitution by taking steps against procurers. All of us consider that this is an essential part of the scheme of the Bill and are strongly in favour of making the provisions against procurers and those who live on the earnings of prostitution as severe as is possible. Judicial corporal punishment has in other countries been found the most effective deterrent in the case of these degraded dregs of humanity and in the interests of their unfortunate victims we recommend that this punishment shall be authorised by law. While it is right to deprive the offender of his profits by the infliction of fines we consider that in no case should fine be the only penalty; the profits of the trade would prevent a fine by itself being deterrent.

Clauses 9, 10, 11 and 12—which we have inserted in the Bill are based on the Burma Act, but we have tried to make these clauses conform to the above principle and to stop possible loopholes which might be found to exist in the wording of the Burma Act.

Clause 13.—We consider that offences under clauses 9, 10, 11 and 12 should be triable only by a Presidency Magistrate or a Magistrate of the first class.

3. The Bill was published in English in the *Calcutta Gazette* of the 14th February, 1923.

4. We do not consider that the Bill has been so altered as to require republication.

5. We recommend that the Bill, as amended by us, be passed.

H. L. STEPHENSON,
Member in charge.

L. BIRLEY.
S. N. MULLIK.
JATINDRA NATH MOITRA.
JATINDRA NATH BASU.
H. P. DUVAL.
S. C. MUKHARJI.
*K. C. ROY CHAUDHURI.
A. RAHEEM.
*F. E. E. VILLIERS.

C. TINDALL,
Secretary to the Govt. of Bengal and
Secretary to the Bengal Legislative Council.

CALCUTTA;
The 16th July, 1923.

* Signed subject to a minute of dissent which will be sent in and published later.

NOTE.—Dr. Hassan Suhrawardy was prevented by illness from attending the meetings of the Select

(*Clause 6.*)

again be used, or be allowed to be used, in any manner described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*), as the case may be, and the Commissioner of Police, if he is satisfied, with or without further inquiry, that such house, room or place is again used in such manner, may, by order in writing on the owner, lessor, manager or occupier of such house, room or place, direct that the use as so described of such house, room or place be discontinued within a period of seven days and be not thereafter resumed.

(*5*) For the purposes of this Act the decision of the Commissioner of Police that a house, room or place is used in any manner, or for any purpose, described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*) shall be final, and the legality or propriety thereof shall not be questioned in any trial or judicial proceeding in any Court.

(*6*) Whoever, after an order has been made by the Commissioner of Police under sub-section (*2*) or sub-section (*4*) in respect of any house, room or place, uses, or allows to be used, such house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to fifty rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to six months in addition to, or in lieu of, any fine imposed. [*Cf.* Ben. Act IV of 1866, s. 43A.]

(*7*) (*Omitted.*)

(*7a*) For the purpose of an inquiry under this section the Commissioner of Police may depute a Deputy Commissioner of Police to make a local investigation, and may take into consideration his report thereon.

(*7b*) The Commissioner of Police shall maintain a register in which shall be entered a description of all houses, rooms and places in respect of which an order has been made under this section. Such register shall be open to inspection by the public on payment of the prescribed fee.

(*8*) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, in respect of which an order has been made on the lessee, tenant or occupier thereof directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on the business of a common prostitute, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

Removal and disposal of minor girls found in brothels, etc.

6. (*1*) The Commissioner of Police, or a Deputy Commissioner of Police, or a police-officer not below the rank of Inspector, specially authorised in writing in this behalf by the Commissioner or a Deputy Commissioner of Police, shall be empowered to enter

(*Clause 16.*)

Rules.

16. The Local Government may make rules—

(*a*) prescribing the fee to be paid for inspection of the register maintained under sub-section (*7b*) of section 5;

(*b*) for the care, treatment, instruction and maintenance of girls placed in suitable custody under sub-section (*2a*) of section 6; and

(*c*) prescribing the places in which girls may be detained under the provisions of section 7.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

(*vi*) *Proposed section 180A, sub-section (8).*—We consider that the basis of the calculation of the sum to be determined as uniform annual money rent should be the average of the amount that was actually paid or payable as rent for the land during the previous six years and that this average rent should not be made merely a factor of equal weight with others for the guidance of the determining officer. We have, therefore, agreed to delete clause (*b*) of this proposed sub-section and have amended the main sub-section to the above effect. As to the subsidiary points which the determining officer should take into consideration in dealing with special cases, objections were put forward by various sides in regard to clause (*a*) and clause (*c*) of this sub-section, but these were withdrawn on compromise, as the various clauses go to balance one another. Drafting amendments have also been made in clause (*d*).

In our opinion the charges incurred by the landlord on account of drainage should also be considered and we have amended clause (*e*) accordingly and have also simplified the drafting of this clause.

(*vii*) *Proposed section 180A, sub-section (9).*—In connection with this proposed sub-section the question as to whether there should be a fixed rate of premium or a varying rate of premium was discussed. A varying rate might meet local conditions and cases where rents are unduly high or unduly low. We, however, on consideration of all the factors in the case have recommended the retention of the proposal in the Bill that there should be a fixed rate of premium in all cases. It is of special importance that the landlord or the tenant, as the case may be, should have a fairly clear idea of what he is asking for or what he is faced with at the time when he makes the application for conversion or receives notice of such application. Where both parties know mathematically what their rights are in the absence of special circumstances, an amicable settlement is far more likely than where there is inevitably a point to be decided by a third party. We have retained the proposal in the Bill that the amount of the premium should be three years' rent.

We consider that the proviso to this sub-section should be deleted. It is better for both the landlord and the tenant that a premium should be paid in regard to the lands in which the tenant has not acquired occupancy rights than that the tenant and his successors should be saddled with an increase of rent in lieu of payment of premium.

(*viii*) *Proposed section 180A, sub-section (10).*—The question of costs was considered in connection with this sub-section, but we consider that it is desirable that the parties should bear their own costs. This will be the case in the absence of a definite provision in the Bill to the contrary. This sub-section has, therefore, been left unaltered.

(*ix*) *Proposed section 180A, sub-section (11).*—We agree to the system of payment of the premium by instalments and consider that the principle of payment by not more than three instalments, as suggested in the Bill, is suitable.

(*x*) We have adopted the remaining sub-sections of the proposed section 180A, and also the proposed section 180B with minor drafting modifications. We consider that the objections in the opinions received to this proposed section are met satisfactorily by the restriction of the operation of the Bill to lands held by settled raiyats or by persons who would have been settled raiyats but for the operation of the *utbandi* provisions of the Tenancy Act.

3. In our deliberations we have throughout kept in view the need for maintaining the general working scheme of the Bill as a basis of compromise and this has necessarily involved give and take on either side in regard to matters of detail in the interest of the success of the measure as a whole.

Note of Dissent by Maulvi Ekramul Huq, B.L., M.L.C.

I do not agree to the payment of any premium by the *utbandi* tenant for which provision is made in section 180A, sub-sections (*7*) and (*9*). But for section 180 of the Bengal Tenancy Act such tenants would have got the right of occupancy long ago and the amended Act does not confer any new right whatsoever but simply tries in a feeble manner to undo a wrong done so long.

(*Clause 2.*)

(*b*) all the lands held in the same village under the same landlord by the raiyat which the raiyat, or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has or had not acquired occupancy rights therein, or

(*c*) both.

(*2a*) Subject to the provisions of sub-section (*2*), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more raiyats under him and a joint application may be made by two or more raiyats in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(*3*) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Local Government.

(*4*) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (*3*) to receive applications.

(*5*) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord of the raiyat is a temporary tenure-holder or *ijaradar* the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(*6*) If the application is made in respect of lands in which the raiyat has not acquired occupancy rights, the officer may reject it in whole or in part in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then received the application the circumstances have in the meantime changed.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1846L., dated Calcutta, the 23rd July, 1923.—The following Report of the Select Committee on the St. Thomas' School Bill, 1923, (with the Bill, as amended by the Committee), is hereby published for general information.

REPORT OF THE SELECT COMMITTEE ON THE ST. THOMAS SCHOOL BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill to provide for the management and future location of St. Thomas' School in Calcutta and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities was referred, have considered the Bill and have the honour to submit this our Report with the Bill, as amended by us, annexed hereto. In reprinting the Bill all changes made by us have, so far as possible, been underlined.

2. We have made some changes in the Title and Preamble to bring the wording into line with the actual facts.

We consider that membership of the Governing Body of St. Thomas' School should be widened and have amended clause 2 accordingly.

In so doing we have transferred from original sub-clause (*d*) to separate sub-clauses, the references to the representative of the Bengal Chamber of Commerce and the representative of the Anglo-Indian and Domiciled European Association of Bengal, so as to make it possible for those bodies to nominate either a member of the Church of England or a member of some other denomination.

We have also added to the body of Governors a European or Anglo-Indian Commissioner of the Corporation. We have also given the Governors a free choice in regard to the persons who shall be co-opted under sub-clause (*2*).

Clauses 11 and 12.—We have considered these clauses in conjunction with clause 2 and consider that they should stand as drafted. In Bengal, whatever the denomination of a school may be, there is under the rules for grants-in-aid to European schools no restriction on religious teaching in that school being imparted to all boarders according to the principles of a particular denomination, while in the case of day-boys a conscience clause is an obligatory condition of a grant-in-aid from the Government. The application of those rules is specially safeguarded by clause 12, and this will ensure that the St. Thomas' School is conducted in this matter on the same general principle as governs the conduct of other European schools in Bengal.

Clause 13.—We have considered very carefully the question of the amount of land that should be made over by the Governors to St. Thomas' Church, and we are of opinion that the area which it is proposed to make over is suitable. A new proposal has been made to increase that area by nine cottahs, but in our opinion this is not justified in view of the financial difficulties of the school.

We consider that the total area of two bighas, as set out in this clause will be sufficient to provide a suitable compound for the Church and, as the Free School site may be disposed of in one or more lots, and as the general lay-out may differ according to the manner of disposal, it is difficult at the present moment to fix the exact boundaries of the land that will be given to the Church. We have, therefore, confined our specification of that land to a

(*Clauses 3—5.*)

(*g*) the following persons, of either sex, being members of the Church of England, namely :—

(*i*) one person to be nominated by the Governor General of India;

(*ii*) two persons to be nominated by the Governor of Fort William in Bengal ;

(*iii*) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta ;

(*iv*) two persons to be nominated by the vestry of St. John's Church, Calcutta ; and

(*v*) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore.

(*2*) The Governors may at a meeting co-opt with themselves such persons, of either sex, not exceeding three in number, as they may consider necessary. Such persons shall be deemed to be Governors for the purposes of this Act.

(*3*) If any of the bodies referred to in clauses (*d*), (*e*) and (*f*) and sub-clauses (*iii*) to (*v*) of clause (*g*) of sub-section (*1*) does not by such date as may be prescribed by the Local Government nominate the Governors mentioned therein, the Local Government shall nominate qualified persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

(*4*) The names of the nominated and co-opted Governors shall be published in the *Calcutta Gazette*.

Incorporation of the Governors.

3. The Governors shall be a body corporate by the name of the "Governors of St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Period of office of Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the *Calcutta Gazette*:

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the *Calcutta Gazette*:

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

Quorum.

5. (*1*) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

(*2*) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

(*Clause 15.*)

RULES.

Power to Governors to make rules

15. The Governors may from time to time make rules for any of the following purposes, namely :—

(*a*) for their own guidance and for the conduct of their business;

(*b*) to determine the persons by whom orders for payment of money, contracts, transfers and other documents may be signed on behalf of the Governors ;

(*c*) for the management and control of the school in all its departments, including any hostel that may be established in connection with the school;

(*d*) regulating the proceedings of sub-committees;

(*e*) prescribing the rates and the conditions under which contributions may be paid by the Governors and their officers, teachers and servants to the provident fund or funds which may be established under section 14, and determining the conditions of payments from such fund or funds.

2. On the Committee assembling, the Hon'ble the Member in charge informed the other members that the Corporation of Calcutta had asked for further time to consider the Bill. If this had been granted, it would have been impossible to place the Bill again before the present Council. Government had however considered very carefully the question as to whether the Bill should be curtailed and confined to certain non-controversial and urgent clauses. On the whole, he was of opinion that it was not desirable to pass the Bill in its original form through the Council during the August session. Sufficient time was not available for the full consideration of certain controversial points which had been raised in various opinions, received in connection with the Bill. Moreover, the Corporation wished to propose changes in other sections of the Act, which were not touched by the Bill. He was prepared to give them time to mature their proposals with the object of legislating next year. He asked the Select Committee to recommend, therefore, that only those portions of the Bill which are of a really emergent nature be placed before the Legislative Council at the consideration stage. The two points which require immediate settlement are the amendment of the wording of section 54, the interpretation of which is in dispute between the Corporation and the Improvement Trust, !and the raising of the rate of interest in sections 78 and 79 of the Act from four to six per cent.

On consideration of the position we have accepted the proposal of the Hon'ble the Member in charge that the Council be asked to proceed only with the abovementioned portions of the Bill.

We have discussed the proposed amendment of section 54, and it has been announced by the Chairman of the Calcutta Corporation and the Chairman of the Improvement Trust that an equitable agreement has been come to in regard to the question of compensation for lands and buildings of the Corporation taken over by the Trust for the purposes of an improvement scheme. We are agreed that the details of the settlement of the dispute should be embodied in the Act and have made an amendment in section 54 accordingly. This amendment carries out the proposals made in the original Bill in sub-clause (*1*) of clause 15 and in sub-clause (*3*) of that clause, but it has also been agreed that the determining factor in regard to the question of payment of compensation by the Board to the Corporation in respect of lands taken over under section 54 should be the question whether the land taken over is going to be returned to the Corporation in accordance with the provisions of section 65 when the improvement scheme has been completed. If the land is so returned—in other words, forms an integral and permanent part of the scheme—the Corporation will be compensated for the temporary loss of it by its improved value on the completion of the improvement scheme. If it is not so returned, but is sold by the Trustees for recoupment purposes, compensation should be payable to the extent of the market value of the land as at the date of declaration made under section 6 of the Land Acquisition Act in respect of other lands scheduled for acquisition within the scheme. Compensation should be payable in all cases for buildings belonging to the Corporation and taken over by the Board.

We have also discussed the question of the amendment of sections 78 and 79 of the Act in regard to the rate of interest payable under those sections. The proposal to raise the rate to six per cent. appears in clause 21 of the Bill, that is to say, in clause (*ii*) of sub-section (*5*) of the proposed new section 78, and in sub-section (*8*) of the said section and also in the amendment to section 79 proposed in clause 22.

With one dissentient we consider that the raising of the rate of interest to six per cent. is justified, but we consider that in cases where the rate has already been fixed in accordance with the Act and where the agreement under the Act has already been executed, or is executed within two months after the coming into force of the increased rate, the old rate of four per cent. should be applied. A modified proposal to this effect is embodied in clause 3 of the revised Bill.

We recommend that the revised Bill as attached to this Report be taken into consideration and passed as amended by us, the Bill in its original form being not considered further. The amendments suggested in the clauses

(4) The sanitary condition of the newly added area, specially Manicktala, is not a satisfactory one and as under section 90 of the new Calcutta Municipal Act, the Corporation shall have to spend annually not less than three lakhs of rupees (Rs. 3,00,000) for the newly added area in the execution of original improvement works from the third year and as the new Corporation will consist of thirteen ward Commissioners elected by the rate-payers of the newly added area, there is not the least doubt that the Corporation shall have to provide substantial amounts from the very commencement of the new Act for the improvement of the said area.

(5) In the very first year of the commencement of the Act, a very substantial amount is likely to be entered in the budget for the improvement of the newly added area as out of twenty-one members of the Budget Special Committee, including the Chairman, eight members will be elected by the Commissioners of the newly added area.

(6) Undue favour appears to have been shown to the rate-payers of the newly added area though for one year as the town of Calcutta, including the area added in 1889, paying a revenue of one crore and fifty-eight lakhs of rupees in 1921-22 shall have only twelve representatives in the Budget Special Committee excluding the Chairman thereof, while the rate-payers of the newly added area paying an aggregate revenue of only Rs. 10,72,000 (rupees ten lakhs and seventy-two thousand) in the same year shall have eight repesentatives in the said Special Committee.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1848L., dated Calcutta, the 23rd July, 1923.—The following Report of the Select Committee on the Calcutta Municipal (No. II) Bill, 1923, (with the Bill, as amended by the Committee), is hereby published for general information.

REPORT OF THE SELECT COMMITTEE ON THE CALCUTTA MUNICIPAL (No. II) BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill to provide for certain matters in connection with the Budget Estimates of the Corporation of Calcutta for the year 1924-25, the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed, and the arrangements to be made in connection with the raising of loans during that year, for the fixing of the percentage of the consolidated rate in respect of the added areas during the four succeeding years and for the amendment of section 20 of the Calcutta Municipal Act, 1923, in respect of the qualification of electors, was referred, have considered the *Bill* and have the honour to submit this, our report, with the Bill, as amended by us, annexed hereto. In reprinting the Bill, all changes made by us have, so far as possible, been underlined.

2. The more important changes are as follows:—

Preamble.—We have made two minor drafting alterations which call for no remark.

Clause 3.—We consider that, with a view to expedition, the scrutiny of the Budget, as framed by the Chairman, should be made by a Special Committee appointed somewhat in the manner laid down in the Thirteenth Schedule to the Act of 1888.

We have added to the number of members that shall serve on this Committee from the Cossipore and Maniktala Municipalities. The Garden Reach Municipality, we consider, is adequately represented under the Bill.

We have provided for the representation of the Corporation on this Special Committee by placing on the Committee eight Commissioners elected from among the ward Commissioners and four Commissioners elected from among the nominated Commissioners.

Clause 4.—The Special Committee will report direct to the Corporation. It is hoped that this will eliminate the present lengthy procedure under which the Corporation, after receiving the General Committee's revised Budget, refer the same again to another Committee of their own before considering the Budget.

We have provided, in the usual manner, against failure by the Commissioners of the municipalities included in the added areas to elect their representatives to the Special Committee.

We have provided that the Commissioners from the added areas who will serve on the Special Committee shall also serve on the Corporation when that body considers the final Budget Estimates and proposals as framed by the Special Committee.

We have also provided against default by the Special Committee or by the Corporation in the final framing, and in the passing, of the Budget Estimates and proposals.

We have considered the proviso to the original clause 4, and in our opinion the situation for the year 1924-25 will best be met by arrangements under which the totals of the rate on holdings, lighting rate, water rate and the latrine fees levied in respect of a holding in any of the added areas under the Bengal Municipal Act shall be deemed to be the consolidated rate levied under the Calcutta Municipal Act, 1923, for the year 1924-25.

THE CALCUTTA MUNICIPAL (No. II) BILL, 1923;

(as amended by the Select Committee.)

[NOTE.—All changes made by the Select Committee have, so far as possible, been underlined.]

A BILL

to provide for certain matters in connection with the Budget Estimate of the Corporation of Calcutta for the year 1924-25, the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and the arrangements to be made in connection with the raising of loans during that year, for the fixing of the percentage of the consolidated rate in respect of the added areas during the four succeeding years, and for the amendment of section 20 of the Calcutta Municipal Act, 1923, in respect of the qualification of electors.

Preamble.

WHEREAS it is expedient to give to representatives of the Commissioners of the municipalities which are to be included in Calcutta, under the provisions of the Calcutta Municipal Act, 1923, an opportunity of taking part in the framing and passing of the Budget Estimate of the Corporation of Calcutta for the year 1924-25, in the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and in the arrangements that are to be made for the raising of any loan during that year, and so to provide for the framing and passing of the said Budget Estimate, the fixing of the said rate and the arrangements for the said loans; Ben. Act III of 1923.

And whereas it is expedient that the Corporation do fix for the year 1924-25 a favourable percentage in respect of the levy of the consolidated rate on lands and buildings in each of the areas added to Calcutta by the Calcutta Municipal Act, 1923, and that they have power to fix a special percentage in respect of the lands and buildings in any such areas during the four succeeding years;

And whereas it is expedient to amend section 20 of the said Act in respect of the minimum amount to be paid by a person as consolidated rate, tax or rent so as to entitle him to be an elector;

It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Calcutta Municipal (No. II) Act, 1923.

(*2*) It extends to Calcutta as defined in clause (*11*) of section 3 of the Calcutta Municipal Act, 1923.

Manner of preparation and passing of Budget Estimate of the Calcutta Corporation for 1924-25, etc.

2. Notwithstanding anything contained in the Calcutta Municipal Act, 1899, or in the Calcutta Municipal Act, 1923, the Budget Estimate of the Corporation of Calcutta for the year 1924-25 for the purposes of the Calcutta Municipal Act, 1923, shall be prepared and passed, and the rates at which the consolidated rate and the taxes for the said year for the said purposes shall be levied and imposed shall be determined and fixed, and the sums of money, if any, that Ben. Act III of 1899. Ben. Act III of 1923

(*Clause 5.*)

the year 1924-25 on any premises in any of the said areas, the Executive Officer may cause such building to be valued, and the consolidated rate on the premises shall be levied at the rate, fixed for that year for the purpose of the levy of the consolidated rate on lands and buildings in Calcutta generally. The valuation so made shall remain in force until the next general re-valuation of the ward under the provisions of the Calcutta Municipal Act, 1923. Ben Act III of 1923.

(2) For the purposes of this section, notwithstanding anything contained in the Calcutta Municipal Act, 1899, the Corporation of Calcutta shall be deemed to include the additional members referred to in clauses (*iv*), (*v*) and (*vi*) of sub-section (*1*) of section 3. Ben. Act III of 1899

(*3*) If the Special Committee fail to submit to the Corporation of Calcutta by the seventh day of March, 1924, the Budget Estimate and proposals referred to in sub-section (*2*) of section 3, the Budget Estimate and proposals of the Chairman referred to in sub-section (*1*) of that section shall be deemed to be the Budget Estimate and proposals of the Special Committee finally framed and duly made in accordance with this Act and the Corporation shall consider them accordingly. If the Corporation of Calcutta fail to consider and to pass by the twenty-second day of March, 1924, the Budget Estimate of the Special Commitee, the Budget Estimate and proposals of the Special Committee shall be deemed to be the Budget Estimate and proposals of the Corporation of Calcutta duly made and passed under the provisions of this Act.

Validity of Budget Estimate for 1924-25, etc.

5. The Budget Estimate of the Corporation of Calcutta for the year 1924-25, as so passed, and the rates at which the consolidated rate and taxes shall be levied and imposed, as so determined and fixed, and the decision of the Corporation in respect of any loan or loans to be raised, shall, notwithstanding anything contained in the Calcutta Municipal Act, 1923, have for all the purposes of that Act full force and effect in Calcutta as defined in clause (*11*) of section 3 of that Act during the year 1924-25 and—

(*i*) the said Budget Estimate shall be deemed to be the Budget Estimate duly passed,

(*ii*) the consolidated rate and taxes levied and imposed at the rates so determined and fixed shall be deemed to be the consolidated rate and taxes duly levied and imposed, and

(*iii*) the loans, if any, incurred in accordance with the said decision shall be deemed to be loans duly incurred,

by the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1923, unless and until such Budget Estimate, consolidated rate and taxes and decision in regard to loans are added to, modified or varied by that Corporation and in accordance with the provisions of that Act.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1927L., dated Calcutta, the 28th July, 1923.—With reference to the Report of the Select Committee on the Calcutta Municipal (No. II) Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923, and in continuation of this office notification No. 1817L., dated the 23rd July, 1923, it is notified that Rai Dr. Haridhan Dutt Bahadur, M.L.C., has since signed the report subject to the following Note of Dissent :—

THE CALCUTTA MUNICIPAL (No. II) BILL, 1923.

Note of dissent by Rai Bahadur Dr. Haridhan Dutt, M.L.C.

Clause 3.—According to the constitution proposed in clause 3, the Special Committee which will be appointed to consider the Budget Estimates for 1924-25, will consist of 21 members including the Chairman. This, in my opinion, will make the Committee too unwieldy. The Committee which was constituted in 1888 consisted of 18 members, of whom 12 represented the Corporation and 6 represented the areas which were then amalgamated. I would retain the same number and proportion between the Corporation and outside representatives.

Clause 7.—On principle it is difficult to justify differentiation in the matter of taxation between the city proper and the areas proposed to be amalgamated. I am, however, prepared to waive the question of principle, and on the ground of expediency, to agree to a rebate for the first three years. I object to any concession beyond that as the statutory liability for expenditure will commence after 3 years from the commencement of the Act. I also object to the rebate being allowed for the whole of the amalgamated areas. Portions of them are highly developed and I see no reason why they should not pay the full rates. I would therefore restrict the provision up to 1926-27 and would limit the concession to such localities in each of these outside areas as the Corporation may prescribe. I realise that it will be discretionary and not obligatory on the Corporation to allow any rebate, but the intention is that the Corporation should exercise this discretion in favour of the amalgamated areas.

Clause 8.—The Select Committee have decided that the qualifying year for the municipal franchise should be that ending with 30th September and they have gone further and omitted the proviso which laid down that the names of owners and occupiers must appear in the Assessment Book. I apprehend serious practical difficulties in the preparation of the electoral rolls in time on this basis, but as the matter has been threshed out at very great length both in the Corporation and in the Select Committee, it is unnecessary for me to elaborate the arguments.

Clause 9.—The object of this provision is to give power to the Local Government to pass necessary orders to meet any difficulty that may arise in the assessment and the imposition of consolidated rates in the added areas during the first year of the new Act. The convenience of this provision is obvious, but it is rather unfortunate that a provision enabling Government to rectify defects in legal enactments by executive order should be necessary. The explanation for the present amending Bill and for a provision of this kind is to be found in the hurry with which the Calcutta Municipal Act of 1923 was dealt with in the Select Committee and in the Council.

NOTE.—Rai Bahadur Dr. Haridhan Dutt, M.L.C., has signed the report on the 24th July, 1923, after the report has been sent to press for publication in the *Calcutta Gazette*.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

In the case, however, of the Magistrate prepared to accept the uncorroborated evidence of the police witness, we are faced with the following conditions: that where the law has failed in the past to get convictions at the direct instance of the person solicited, it proposes getting one on the mere opinion (and it can seldom be anything more substantial than an opinion) of the sub-inspector or sergeant.

7. My objections on the other hand to this clause are far more than negative in that I believe that it will do definite harm; the chances of blackmail in this connection are more than hypothetical; and in making this statement I neither impute nor imply any charge of dishonesty or corruption against the Calcutta Police; I merely view the matter from the standpoint that it is not reasonable or safe to act on the assumption that the Calcutta Police surpass in integrity the police of other countries or towns; and cases of blackmail have undoubtedly occurred elsewhere.

In my opinion a still more serious danger is likely to arise from perfectly honest mistakes on the part of the police; and the subsequent proving of her innocence will do little to mitigate the humiliation or lessen the irreparable damage done to the good name of an innocent woman, whether European or Indian, who has thus been unjustly arrested.

8. Finally, I look upon clause 4 as a definite menace to the liberty of the subject—and particularly to that section of the public whose interests it is our special duty to safeguard—namely, the Poor; whose only places of recreation and of perfectly innocent meetings with their friends are those "in or within sight of a street or public place".

9. I have therefore signed the Report of the Select Committee subject to this minute of dissent and shall ask leave to move an amendment that clause 4 of the Bill be omitted and that the law as it stands to-day be maintained whereby anyone soliciting for the purposes of immorality may be arrested only when a complaint has been lodged by the person solicited.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 15, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2060L., dated Calcutta, the 9th August, 1923.—With reference to the footnotes to the Report of the Select Committee on the Bengal Tenancy (Utbandi Amendment) Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923 and in continuation of this office notification No. 1845L., dated the 23rd July, 1923, it is notified that Mr. Syed Erfan Ali, M.L.C., has appended the following Note of Dissent to the Report :—

(2) The Local Government shall consider any objection or suggestion in regard to the intended declaration which may be submitted to them in writing by any person likely to be affected by such declaration within a period to be specified in this behalf in the notification issued under sub-section (1), and may then, by notification, declare the said area, or any portion thereof, to be, for the purposes of this Act, a tea-garden area.

(3) Every notification issued under this section shall define the limits of the area to which it relates.

(4) The Local Government may, by a like notification, include or exclude any area in or from a tea-garden area.

Creation and incorporation of Tea-gardens Board of Health.

5. (1) The Local Government may, by notification, establish a Board, to be called a Tea-gardens Board of Health, for carrying out the purposes of this Act in any tea-garden area specified in such notification. [*Cf.* B. & O. Act IV of 1920, s. 5.]

(2) The said Board shall, by the name of the Tea-gardens Board of Health of (*the designation of the tea-garden area*), be a body corporate and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, with power to acquire or hold property, both moveable and immoveable, and, subject to such restrictions as may be prescribed, to transfer any such property held by it and to contract and do all other things necessary for the purposes of this Act.

Constitution of the Board.

6. (1) The Board shall consist of fifteen members, of whom— [*Cf.* B. & O. Act IV of 1920, s. 6.]

(a) ten shall be elected by the managers of tea-gardens within the tea-garden area, provided that at least one of the members so elected shall be a registered medical practitioner;

(b) one shall be elected by the Indian Tea Association;

(c) one shall be elected by the District Board within whose jurisdiction the tea-garden area lies; and

(d) three shall be appointed by the Local Government.

(2) The election of members under this section shall be made in such manner and within such period as may be prescribed.

(3) If any of the bodies mentioned in sub-section (1) does not, within the prescribed period, elect a person to be a member of the Board, the Local Government shall nominate a member in his place; and the person so nominated shall be deemed to be a member as if he had been duly elected by such body.

(4) No act done by the Board, or by any of its officers, shall be deemed to be invalid merely by reason of any vacancy among any class of members or by reason of the total number of members being less than that fixed under sub-section (1).

(5) In case of any dispute as to the amount of the assessment or as to the person by whom the tea-garden cess is payable in respect of any piece of land, the matter shall be referred to the Commissioner, whose decision shall be final.

(6) The cess so levied on every such owner or landholder shall be recoverable as a public demand.

Grant by the District Board to the Tea-garden Area Fund.

15. (1) Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885, the District Board within the jurisdiction of which any tea-garden area lies shall make an annual grant to the Tea-garden Area Fund. Ben. Act III of 1885.

(2) For the purpose of determining what grant shall be made in any year under sub-section (1), the Board shall, on or before the first day of November of each year, submit a statement to the District Board, setting out its estimated receipts and expenditure and programme of works during the ensuing year, and stating the amount of the grant which it requires in order to carry out the purposes of this Act during that year.

(3) If the District Board agrees to make the required grant, it shall record a resolution to this effect and shall proceed to make provision in its budget for the said grant.

(4) If the District Board does not agree to make the required grant, it shall, on or before the first day of January, submit a representation to the Local Government setting out the grounds on which it is not prepared to make the grant, and stating the amount which in its opinion it may reasonably be required to pay to the Tea-garden Area Fund.

(5) The Local Government shall then fix the amount to be paid by the District Board in the ensuing year, provided that this amount shall in no case exceed the sum which, in the opinion of the Collector, whose order shall be final, represents the net receipts of the public works cess levied from the tea-garden area in the preceding year.

Explanation.—The term "net receipts of the public works cess" means the gross receipts less the collection charges.

(6) When the Local Government have fixed the amount of the grant to be paid under sub-section (1), this amount shall be payable by the District Board to the Tea-garden Area Fund in such manner and at such time as may be prescribed as though it were an amount payable out of the District Fund under section 53 of the Bengal Local Self-Government Act of 1885. Ben. Act III of 1885.

Establishment of the Board.

Establishment of the Board.

16. The Board may, save as provided in section 18 and subject to such restrictions as may be prescribed, determine and appoint the establishment to be employed by it, and fix the salaries and allowances to be paid to the members of such establishment. [Cf. B. & O. Act IV of 1920, s. 12.]

(*vii*) generally for the carrying out of the purposes of this Act, in the area for the control of which the Board has been constituted, or in any part thereof.

Power to require owners of tea-gardens and others to execute such measures.

23. (*1*) If the Board is satisfied that it is necessary that measures should be taken for any of the purposes specified in section 22 in any part of the tea-garden area, and that the necessity for such measures is distinctly referable to any act or omission in respect of his property on the part of the owner of any tea-garden in which are employed persons resident in the tea-garden area, the Board may, by a notice specifying the measures to be taken, require such owner, at his own cost,— [*Cf.* B. & O. Act IV of 1920, s. 19.]

(*i*) to execute, within a period to be fixed in the notice, all works which the Board may consider necessary for carrying such measures into effect, and to maintain in good repair all works so executed ;

(*ii*) to carry on such continuous or periodical operations as the Board may direct, for carrying such measures into effect.

(*2*) If the Board is satisfied that in order to prevent or abate a nuisance affecting the public health it is necessary that any landholder or owner of house-property in any part of the tea-garden area should take certain action in regard to any property belonging to him or in his possession or under his management, the Board may by notice require such person to take such action at his own cost.

(*3*) If in any of the cases referred to in sub-sections (*1*) and (*2*) the Board is satisfied that immediate remedy is necessary, the Board may, for reasons to be recorded, by a notice specifying the measures to be taken and the estimated cost thereof (if any), declare its intention of itself executing and maintaining any such work or carrying on any such operations or taking such action at the cost of such owner, landholder or owner of house-property.

Objection against requisition.

24. Any person who is required by a notice under sub-section (*1*) or sub-section (*2*) of section 23 to do anything may prefer an objection in writing to the Board within five days from the date of service of the notice, and the Board shall, after considering the objection, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred ; or substituting for such requisition a declaration under sub-section (*3*) of section 23 if the Board, for reasons to be recorded, is satisfied that immediate remedy is necessary. [*Cf.* B. & O. Act IV of 1920, s. 20.]

Power to execute work on default.

25. If any work required by a notice under sub-section (*1*) of section 23 be not executed, or if the action required to be taken under sub-section (*2*) of section 23 be not taken, to the satisfaction of the Board, within the period fixed by the notice or within such further period (if any) as may be allowed by the Board, or if any work executed in pursuance of a notice under sub-section (*1*) of section 23 be not maintained in repair to the satisfaction of the Board, or if any operations required by any such notice be not carried on to the satisfaction of the Board, or, in [*Cf.* B. & O. Act IV of 1920, s. 21.]

(i) regulate the custody of the Tea-garden Area Fund, the keeping and audit of accounts, and the manner in which payments may be made from the fund; and

(j) regulate the service of notices and requisitions.

(3) All rules made under this section shall be published in the *Calcutta Gazette*.

Power of Board to make by-laws.

34. (1) The Board may, after previous publication, make by-laws— [Cf. B. & O. Act IV of 1920, s. 25.]

(i) prescribing the duties of owners and managers of tea-gardens and of persons acting under them;

(ii) prescribing the matters in respect of which notices, returns and reports shall be furnished by owners and managers of tea-gardens, the form of such notices, returns and reports, the persons and authorities to whom they are to be furnished and the particulars to be contained in them;

(iii) providing for the water-supply, sanitation and conservancy of the tea-garden area;

(iv) providing for the taking of measures to prevent the outbreak or spread of epidemic disease;

(v) regulating the construction and sanitation of houses for the accommodation of persons employed in the tea-gardens;

(vi) providing for the prevention or abatement of nuisances affecting the public health committed by any persons within the limits of the tea-garden area;

(vii) prescribing the medical assistance to be provided by the owners and managers of tea-gardens for the labourers employed under them;

(viii) prescribing the fees to be paid for the grant of licenses for markets or *hâts*, and the conditions subject to which such licenses shall be granted; and

(ix) generally for promoting the safety, health and welfare of persons resident within the tea-garden area.

(2) By-laws made under this section shall not take effect until they have been confirmed by the Local Government and published in the *Calcutta Gazette*.

Penalties for offences.

35. (1) Whoever obstructs any Medical Officer of Health or Sanitary Inspector or any contractor duly employed by the Board in this behalf in the discharge of his duties under this Act or under the rules or by-laws made thereunder, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any tea-garden area, or withholds any information necessary for the purposes of such inquiry, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. [Cf. B. & O. Act IV of 1920, s. 26.]

7. Clause 20 states the ordinary conveniences or comforts which a tea-garden owner is required to provide for his labour force, and clause 22 *inter alia* vests power in the Board to enforce the obligations imposed under clause 20.

8. Clause 27 which provides for the licensing and thereby the control of private parks or markets is essential to enable the Board to ensure the purity of food-stuffs.

It will be seen that an appeal from an order of the Board refusing to grant a license may be preferred to the Divisional Commissioner.

9. In clause 32 the jurisdiction of district, local and union boards is barred in respect of sanitary measures in tea-garden areas.

10. The Local Government and the Board are given wide powers to make rules and by-laws respectively for carrying out the purposes of the Act. It will be seen that the powers of the Board in this respect are confined mainly to obtaining information on such matters as vital statistics, to providing for water-supply, sanitation and conservancy in the tea-garden area, to preventing the outbreak or spread of epidemic disease, to regulating the type of accommodation for the labour force, and to abating nuisances which may be injurious to the public health in a tea-garden area.

11. Clause 38 is important in providing that offences under the proposed Act shall not be tried by any Court inferior to that of a Magistrate of the first class or a Subdivisional Magistrate.

SURENDRA NATH BANERJEA,
Member-in-Charge.

CALCUTTA:
The 9th July, 1923.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

(*Clauses 4-7.*)

(*2*) For section 29B of the said Act the following shall be substituted, namely :—

"29B. In appointing persons to be members of a District or Local Board the Local Government shall select persons who in their opinion are specially fitted to be members of such Boards and shall have regard to the representation of minorities and of the backward classes."

Appointment of members of District and Local Boards.

Amendment of section 31 of Ben. Act III of 1885.

4. In section 31 of the said Act for the word "three", in the two places where it occurs, the word "seven" shall be substituted.

Amendment of section 32.

5. In clause (*g*) of section 32 of the said Act for the words "leave, leave allowance" the words "allowances, leave" shall be substituted.

Amendment of section 52.

6. In section 52 of the said Act after clause (*5a*) the following shall be inserted, namely :—

"(*5b*) all receipts accruing within the district from the carriage tax, and the *mela* tax, and from license fees levied in respect of markets ;"

Insertion of new sections 52A, 52B, 52C and 52D.

7. After section 52 the following shall be added, namely :—

"52A. (*1*) Surplus moneys at the credit of the District Fund which cannot immediately or at an early date be applied to the purposes to which that Fund is applicable may, from time to time, with the special permission of the Local Government, be deposited at interest or placed in current account in the Imperial Bank of India or in any other Bank or Banks in Bengal which may be approved in this behalf by the Local Government.

Investment of surplus money.

(*2*) The loss, if any, arising from any such deposit shall be debited to the District Fund.

52B. (*1*) The District Board may, with the sanction of the Local Government, impose a tax on carriages kept or ordinarily used within the district, at such rates as the District Board may, with the approval of the Local Government, from time to time fix.

Tax on carriages.

(*2*) The tax imposed under sub-section (*1*) shall be assessed and collected by the District Board or by such other local authority as the Local Government may direct and in such manner as may be prescribed, and objections against such assessment shall be made in such manner as may be prescribed, and shall be heard in such manner as may be prescribed by the District Board or such other local authority as the Local Government may direct.

(*3*) The tax on carriages shall not be imposed in respect of ordinary bicycles or tricycles or in respect of any vehicle or class of vehicle which the Local Government may by general or special order exempt therefrom.

(Clauses 8-13.)

(*2*) A license granted under sub-section (*1*) shall remain in force for one year unless it is suspended or cancelled by the District Board for breach of any of its conditions.

(*3*) There shall be paid for every license granted under sub-section (*1*) such fee as may be fixed by the District Board."

Amendment of section 53.

8. In section 53 of the said Act—

(*i*) the word "and" at the end of clause (*c*) under the heading "Fifthly" shall be omitted and to clause (*d*) under that heading the following shall be added, namely:—

"and any loans granted to Union Boards under this Act".

(*ii*) to clause (*d*) under the heading "Sixthly" the following shall be added, namely:—

"and of their subsistence thereat."

Amendment of section 64A

9. In clause (*c*) of section 64A of the said Act after the words "furtherance of" the word "primary," shall be inserted.

Amendment of section 86A

10. For the word "four" in clause (*c*) of proviso (*1*) to section 86A of the said Act the word "five" shall be substituted, and for the words "ten thousand rupees" in proviso (*2*) to that section the words "five thousand rupees" shall be substituted.

Amendment of section 99

11. In section 99 of the said Act for the word "prescribed" the word "fixed" shall be substituted.

Amendment of section 100

12. In section 100 of the said Act the word "and" at the end of clause (*3d*) shall be omitted and after that clause the following shall be added, namely:—

"(*3e*) provide for the improvement of agriculture, and".

Insertion of new section 100A.

13. After section 100 of the said Act the following shall be inserted, namely:—

"100A. (*1*) The District Board may grant, subject to such conditions as regards the rate of interest and the period and method of repayment as the Local Government may be rule impose, loans to Union Boards to assist them in the performance of duties imposed on them by this Act or by the Bengal Village Self-Government Act, 1919.

Power to District Board to grant loans to union boards

(*2*) The payment of interest on, and repayment of any loans granted by the District Board to a Union Board shall be a charge on the Union Fund and shall take precedence over all other charges on that fund other than those referred to in the first proviso to sub-section (*2*) of section 46 of the Bengal Village Self-Government Act, 1919".

9. Clause 9 will enable the District Board to establish scholarships for the furtherance of primary education. It is at present able to give scholarships merely for technical or other special forms of education, although the promotion of primary education is an important function of local bodies.

10. In clause 10 power is taken to levy tolls in the case of a bridge which has cost only Rs. 5,000 whereas under the present Act tolls can only be levied if a bridge has cost not less than Rs. 10,000.

SURENDRA NATH BANERJEA,

Member-in-charge.

CALCUTTA;

The 9th July, 1923.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

THE BENGAL MUNICIPAL BILL, 1923.

SUMMARY OF CONTENTS.

PART I.

PART II.

PART III.

CLAUSE.

CLAUSE.

Tolls on bridges.

General provisions relating to tolls on ferries and bridges.

Rules.

CHAPTER VI.

STREETS.

General.

Building-lines and street alignments for public streets.

CLAUSE.

Markets.

CHAPTER XVIII.

WEIGHTS AND MEASURES.

CHAPTER XIX.

FOOD AND DRUGS.

Sale of food and drugs.

Inspection, seizure and destruction of food and drugs.

Noxious animals.

CLAUSE.

Licenses.

CHAPTER XXIII.

HILL MUNICIPALITIES.

General.

Definitions.

Roads.

Drains.

Safety of the hillside.

Prosecutions.

CLAUSE.

Suits.

CHAPTER XXVI.

SAVINGS.

CHAPTER XXVII.

DELEGATION OF POWERS AND CONTROL.

Delegation.

Control.

(*Chapter I.—Preliminary.—Clause 3.*)

"Building". (3) "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall (other than a boundary wall not exceeding ten feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever, but does not include "a hogla" or other similar kind of temporary shed erected on ceremonial festive occasions; [Cf. C. M. Act, s. 3 (7).]

"Building-line". (4) "building-line" means the line up to which the main wall of a building abutting on a street or a projected public street may lawfully extend; [Cf. C. M. Act, s. 3 (8).]

"*Bustee*". (5) "*bustee*" means an area containing land occupied by, or for the purposes of, any collection of huts; [Cf. C. M. Act, s. 3 (10).]

"Carriage". (6) "carriage" means any wheeled vehicle, with springs or other appliances acting as springs, which is used for the conveyance of human beings, and includes a *jinrickshaw*, but does not include a bicycle or a tricycle (other than a motor-bicycle or motor-tricycle), or a perambulator or other form of vehicle designed for the conveyance of small children; [Cf. C. M. Act, s. 3 (13).]

"Cart". (7) "cart" means any cart, hackery or wheeled vehicle with or without springs, which is not a "carriage" as defined in this section, and includes a hand-cart, but does not include a perambulator or other form of vehicle designed for the conveyance of small children; [Cf. C. M. Act, s. 3 (14).]

"Connected-privy". (8) "connected-privy" means a privy which is directly connected with a sewer; [Cf. C. M. Act, s. 3 (15).]

"Conservancy". (9) "conservancy" means the removal and disposal of "sewage", "offensive matter" and "rubbish"; [New.]

"Cubical extent". (10) the expression "cubical extent", when used with reference to the measurement of a building, means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest or only storey; [Cf. C. M. Act, s. 3 (18).]

"Dairy". (11) "dairy" includes any farm, cattle-shed, cow-house, milk-store, milk-shop or other place from which milk is supplied only on, or for, sale or in which milk is kept, or used for the purposes of sale, or manufacture into butter, *ghee*, cheese, curds, or dried or condensed milk, for sale, [Cf. C. M. Act, s. 3 (19).]

and in the case of a dairyman, who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in properly closed and unopened receptacles in which it was delivered to the shop, or a shop, or other place in which milk is sold for consumption on the premises only or a shop or place from which milk is sold or supplied in hermetically closed and unopened receptacles in the same original condition in which it was first received in such shop or place;

"Dangerous disease". (12) "dangerous disease" means— [Cf. C. M. Act, s. 3 (21).]

(*a*) cholera, plague, small-pox, cerebro-spinal meningitis and diptheria; and

(*b*) any other disease which the Local Government may, by notification, declare to be a dangerous disease for all or any of the purposes of this Act;

"District Magistrate". (13) "District Magistrate" means the chief magistrate in a district; [Cf. Ben. Act III of 1884, s. 6 (7).]

(*Chapter I.—Preliminary.—Clause 3.*)

and any vessel lying in any river, harbour or other water not being a port declared under the Indian Ports Act, 1908; XV of 1908.

"Prescribed". (*41*) "prescribed" means prescribed by this Act or by rules or by-laws made thereunder; [New.]

"Private drain". (*42*) "private drain" means any drain which is not a municipal drain as defined in this section; [*Cf.* Ben. Act III of 1884, s. 6 (*30*).]

"Private street". (*43*) "private street" means any street, road, lane, gully, alley, passage or square which is not a "public street" as defined in this section, and includes any passage securing access to four or more premises, whether belonging to the same or different owners, but does not include a passage provided in effecting the partition of any masonry building amongst joint owners, where such passage is not less than eight feet wide; [*Cf.* C. M. Act, s. 3 (*54*).]

"Public street". (*44*) "public street" means any street, road, lane, gully, alley, passage, pathway, square or court whether a thoroughfare or not, over which the public have a right of way, and includes— [*Cf.* C. M. Act, s. 3 (*57*).]

(*a*) the roadway over any public bridge or causeway,

(*b*) the footway attached to any such street, public bridge or causeway, and

(*c*) the drains attached to any such street, public bridge or causeway, and, where there is no drain attached to any such street, shall be deemed to include also, unless the contrary is shown, all land up to the boundary wall, *ail*, hedge or pillar of the premises, if any, abutting on the street, or, if a street alignment has been fixed, then up to such alignment;

"Registered medical practitioner". (*45*) "registered medical practitioner" means a medical practitioner registered under the Bengal Medical Act, 1914; [*Cf.* C. M. Act, s. 3 (*59*).] Ben. Act VI of 1914.

"Rubbish". (*46*) "rubbish" means dust, ashes, broken bricks, mortar, broken glass, and refuse of any kind which is not "offensive matter" or "sewage" as defined in this section; [*Cf.* C. M. Act, s. 3 (*61*).]

"Sewage". (*47*) "sewage" means night-soil and other contents of privies, urinals, cesspools or drains, and includes trade effluents and discharges from manufactories of all kinds; [*Cf.* C. M. Act, s. 3 (*64*).]

"Slaughter-house". (*48*) "slaughter-house" means any place used for the slaughter of cattle, sheep, goats, kids or pigs for the purpose of selling the flesh thereof as meat; [*Cf.* C. M. Act, s. 3 (*66*).]

"Street". (*49*) "street" means a public or private street; [*Cf.* C. M. Act, s. 3 (*67*).]

"Street alignment". (*50*) "street aligument" means the line dividing the land comprised in and forming part of a street from the adjoining land; [*Cf.* C. M. Act, s. 3 (*68*).]

"The Commissioners". (*51*) "the Commissoners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under this Act; [*Cf.* Ben. Act III of 1884, s 6 (*18*).]

"The Magistrate". (*52*) "the Magistrate" includes the District Magistrate, the Magistrate in charge of a division of the district in which division a municipality is constituted, and every Magistrate subordinate to the District Magistrate to whom the District Magistrate may have made over any duties under this Act; [*Cf.* Ben. Act III of 1884, s. 6 (*8*).]

(Chapter II.—The Municipalities.—Clauses 7-10.)

(2) A copy, both in English and in Bengali, of every notification issued under sub-section (1) shall be posted up in a conspicuous place in the office of the Commissioners of the municipality or municipalities concerned, or, in the case of a notification under clause (a) of that sub-section, in the office of the District Magistrate, and in such other public places as the Commissioners or the District Magistrate, as the case may be, may direct; [Cf. Ben. Act III of 1884, ss. 8 and 8A.]

and a public proclamation shall be made by beat of drum throughout the municipality or local area concerned that such copy has been so posted up, and is open to inspection in such office.

Consideration of objections.

7. Any inhabitant of the town or local area, or any rate-payer of the municipality or municipalities, in respect of which a notification has been published under section 6 may, if he objects to anything contained in the notification, submit his objection in writing through the District Magistrate to the Local Government within six weeks from the date of the publication, and the Local Government shall take his objection into consideration. [Cf. Ben. Act III of 1884, ss. 8 and 9A.]

Constitution, abolition or alteration of limits of municipality.

8. When six weeks from the date of the publication of the notification have expired, and after considering any objections which may be submitted, the Local Government may by notification— [Cf. Ben. Act III of 1884, ss. 8 and 9A; Pun. Act III of 1911, s. 4 (5) and (6); C. P. Act XVI of 1903, s. 5.]

(a) constitute the town or any specified part thereof a municipality under this Act; or

(b) withdraw the whole area comprised in the municipality from the operation of this Act; or

(c) include the local area or any part thereof in the municipality or exclude it therefrom; or

(d) subdivide the municipality into two or more municipalities or unite the municipalities, as the case may be; or

(e) define the limits of any municipality; or

(f) alter the number of Commissioners of a municipality.

Application of Act and subsidiary orders in areas included within a municipality.

9. When any local area is included in a municipality by a notification under section 8 all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area unless the Local Government in and by the notification otherwise direct. [New. Cf. Pun. Act III of 1911, s. 15 (4); C. P. Act XVI of 1903, s. 6.]

Continuance of Act and subsidiary orders in municipalities formed by subdivision.

10. When any municipality is subdivided into two or more municipalities by a notification under section 8 then, notwithstanding anything contained in this Act, all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such subdivision were in force in any part of the original municipality, shall be deemed to be in force in the same part of the municipalities formed by the subdivision, unless the Local Government in and by the notification otherwise direct. [New.]

(*Chapter III.—The Municipal Authorities.— Clauses 18-20.*)

(including railways and shipping and industries connected therewith),

(*i*) increase the number of nominated Commissioners beyond the proportion mentioned in that section in order to secure the proper representation of such industry or industries, or if it appears expedient to the Local Government that the industry or industries should be represented by elected Commissioners, constitute industrial constituencies for the representation of such industry or industries on such territorial basis as may appear to the Local Government to be expedient;

(*ii*) provide for the representation of the inhabitants who are not directly connected with such industry or industries by the formation of electoral constituencies for such inhabitants, on such territorial basis as may appear to the Local Government to be expedient;

and the Local Government may further provide for election by general electorates in any portion of such municipality.

(*2*) In any municipality to which the provisions of sub-section (*1*) are applied the electoral roll shall be prepared and the elections held in such manner as the Local Government may prescribe.

Power to divide municipality into wards.

18. (*1*) The Local Government may, by notification, divide any municipality into wards for the purpose of the election of Commissioners. [*Cf.* Ben. Act III of 1884, s. 15.]

(*2*) The Local Government may by rule make provision for the special representation, among the elected Commissioners of any municipality, of any class of the community (and specially of Muhammadans), when the persons of such class entitled to vote at an election of Commissioners form a minority of the total number of persons in the municipality so entitled to vote.

The electoral roll.

19. (*1*) The Chairman shall prepare and publish at the time and in the manner prescribed an electoral roll showing the names of persons qualified to vote. [New; *cf.* Ben. Act III of 1884, s. 15.]

(*2*) Every person whose name appears in the final electoral roll published under this section shall, so long as such roll remains in force, be entitled to vote at an election; and no person whose name does not appear in such roll shall vote at an election.

(*3*) When a municipality has been divided into wards the electoral roll shall be divided into separate lists for each ward.

(*4*) The electoral roll as published shall remain in force till the publication of a fresh electoral roll.

General disqualifications for being a Commissioner.

20. (*1*) A person shall not be eligible for election or appointment as a Commissioner if such person— [*Cf.* C. M. Act, s. 22.]

(*a*) is a female; or

(*Chapter III.—The Municipal Authorities.— Clauses 22-26.*)

Election of Commissioners.

22. (*1*) A general election and appointment of Commissioners shall be held and made under the provisions of this Act at such time as the Local Government may prescribe; but such election or appointment shall not take effect until the first day of 192 . [*Cf.* C. M. Act, s. 1.; Ben. Act III of 1884, s. 16]

(*2*) General elections of Commissioners shall take place triennially on such days as the Commissioners of Divisions may fix for each municipality in their divisions:

Provided that where the term of office of the Commissioners of a municipality, as a body, has been extended by the Local Government under sub-section (*5*) of section 52, the general election for that municipality shall take place as early as possible after the expiration of such term on a day to be fixed by the Commissioner of the Division.

(*3*) Elections and appointments in respect of casual vacancies shall be held and made at such other times as may be prescribed in accordance with the provisions of this Act.

Explanation.—The election to fill the vacancy on the expiration of the term of office of an individual Commissioner whose term of office has been extended by sub-section (*5*) of section 52 shall be treated as an election to fill a casual vacancy.

On failure of election, Commissioners to be appointed by Government.

23. If the electorate in any municipality fails within the prescribed time to elect the number of Commissioners to be elected in accordance with the provisions of sections 15, 16 or 17, the Local Government may appoint Commissioners to complete that number. [*Cf.* Ben Act III of 1884, s. 16.]

Voting to be by secret ballot.

24. The manner of holding elections shall be prescribed by rules made under this Act, but when a poll is taken at any election of a Commissioner the voting at such election shall be by secret ballot to be conducted in the manner prescribed. [New; *cf* Ben. Act III of 1884, s. 15]

Offences in respect of electoral list.

25. (*1*) Every person who by claiming a qualification which he knows that he does not possess to vote at a municipal election or by using false documents or by a false declaration or by any other deceitful means procures the improper entry of the name whether of himself or of any other person in the electoral roll, or the improper omission of any name therefrom shall be punished with imprisonment which may extend to three months or with fine or with both. [*Cf* Mad Act V of 1920, s. 52.]

(*2*) Every municipal officer or servant or polling officer who wilfully makes or procures any improper entry in the electoral roll or any improper omission therefrom shall be punished with imprisonment which may extend to six months or with fine or with both.

Corrupt practices

26. (*1*) A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person— [*Cf.* U. P. Act II of 1916, s. 28.]

(*i*) induces or attempts to induce by fraud or coercion any voter to give or refrain from giving a vote in favour of any candidate;

(*ii*) threatens any candidate or voter, or any person in whom a candidate or voter is interested with injury of any kind; [*Cf.* Indian Penal Code, s. 171C.]

(*iii*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure;

(*Chapter III.—The Municipal Authorities.— Clauses 32-34.*)

Order of disqualification.

32. Every person convicted of an offence punishable under sections 25 to 30 (both inclusive) shall be disqualified from voting or from being elected in any election to which this Act applies and from holding the office of Chairman, or Commissioner under this Act for such period, not being less than three years nor more than six years from the date of his conviction, as the Court may by order determine. [*Cf.* Mad Act V of 1920, s. 60.]

Proceedings to set aside an election.

33. If the validity of any election of a Commissioner is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, file a petition before the District Judge of the district within which the election has been or should have been held : [New, Ben. Act III of 1884, s. 15.]

Provided that the validity of such election shall not be questioned in any such petition—

(*a*) on the ground that the name of any person qualified to vote has been omitted from the electoral roll or rolls; or

(*b*) on the ground that the name of any person not qualified to vote has been inserted in the electoral roll or rolls; or

(*c*) on the ground of any non-compliance with this Act or any rule made under this Act, or of any mistake in the forms required thereby, or of any error, irregularity or of informality on the part of the officer or officers charged with carrying out this Act or rules made under this Act unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election.

Procedure and powers of Judge holding inquiry.

34. (*1*) Where a petition has been filed under section 33 the District Judge, or any Subordinate Judge specially empowered in this behalf by the Local Government to whom the District Judge may transfer the petition, may, after holding such inquiry in accordance with the prescribed procedure as he deems necessary, and subject to the provisions of sections 35 and 36 pass an order confirming or amending the declared result of the election or setting the election aside. [*Cf.* Bom. Act III of 1901, s. 22 (2); Ben. Act III of 1884, s. 15.]

(*2*) For the purposes of the said inquiry the said Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court, and may also direct by whom the whole or any part of the costs of such inquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908. V of 1908.

(*3*) The Judge may, at any stage of the proceedings, require the petitioner to deposit in Court the costs incurred or likely to be incurred by any respondent, or to give security or further security for the payment of the same, and if, within the time fixed by him, or

(Chapter III.—The Municipal Authorities.—Clauses 43, 44.)

appointed to be Commissioners, whichever publication may be later, elect by name in the prescribed manner one of their number to be Chairman.

(2) In the case of a vacancy in the office of Chairman other than a vacancy occurring under the provisions of section 55, the Commissioners shall, at a meeting to be held within fourteen days from the date of the occurrence of the vacancy, elect by name in the prescribed manner one of their number to fill the vacancy.

(3) The election of a Chairman by the Commissioners shall be subject to the approval of the Local Government. [Cf. Ben. Act III of 1884, s. 59 (a).]

(4) If the Local Government disapprove of any election by the Commissioners of a Chairman, they may order the Commissioners to elect within a period to be fixed in the order another person from among their number to be Chairman.

(5) The Chairman when elected shall hold office as such pending the orders of the Local Government under sub-section (3) or sub-section (4), as the case may be, but, if the election is not approved by the Local Government, he shall be deemed to have vacated his office from the date of receipt by the Commissioners of the order of the Local Government made under sub-section (4).

(6) The meeting to be held under sub-section (1) shall be convened by the Chairman of the out-going body of Commissioners, or in the case of a newly created and constituted municipality by the Magistrate, and if not so convened within five days from the date referred to in sub-section (1) may be convened by requisition of any three of the Commissioners. Three clear days' notice shall be given of the meeting.

(7) The meeting to be held under sub-section (2) shall be convened by the Vice-Chairman and in default of such convention there shall be a like right of convention thereof by three Commissioners and a like period of notice to that provided by sub-section (6).

Appointment of Chairman on failure to elect or on request of Commissioners.

43. If within the period of fourteen days fixed by sub-section (1) or sub section (2) of section 42 or within the period fixed by an order under sub-section (4) of that section the Commissioners fail to elect a Chairman, or, notwithstanding anything contained in section 42, if when a vacancy occurs, at a meeting attended by not less than two-thirds of the Commissioners, they request the Local Government to appoint a Chairman, the Local Government shall appoint a Chairman by name. [Cf. Ben. Act III of 1884, s. 28 (2).]

Status of appointed Chairman.

44. Notwithstanding anything contained in section 14 every Chairman appointed under this Act, if not already a Commissioner of the municipality of which he has been appointed Chairman, shall, from the date of his appointment, during the term of his office, enjoy all the rights and privileges, and be subject to all the liabilities and disabilities of a Commissioner of the municipality to which such appointment relates, but shall not be reckoned in calculating the proportions of one-fourth and one-fifth under the provisions of sections 15 and 16. [Cf. Ben. Act III of 1884, s. 24.]

(*Chapter III.—The Municipal Authorities.—Clauses 54-55.*)

commences, the oath or affirmation laid down in sub-section (*1*) shall cease to hold his office and his seat shall be deemed to have become vacant.

(*3*) Notwithstanding anything contained in the Indian Oaths Act, 1873, every elected or appointed Commissioner of a municipality holding office at the commencement of this Act shall, at the first meeting of the Commissioners which he attends after the commencement of this Act, make an oath or affirmation of his allegiance to the Crown in the following form, namely :— X of 1873

" I, A. B., a Commissioner of this municipality, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, His heirs and successors, and that I will faithfully discharge the duties of a Commissioner of this municipality."

(*4*) Any elected or appointed Commissioner holding office at the commencement of this Act who fails to make, within three months from the commencement of this Act, the oath or affirmation laid down in sub-section (*3*) shall cease to hold his office and his seat shall be deemed to have become vacant.

Explanation.—A person who by constitutional means endeavours to make changes in the constitution shall not be deemed to have thereby violated his oath of allegiance.

Filling of vacancies and tenure of office of person filling vacancy.

54. If the election of any Commissioner is declared void under the provisions of section 35 or section 36 or if any Commissioner, Chairman or Vice-Chairman is, by reason of his death, resignation or removal or by reason of his seat becoming vacant under the provisions of section 51 or section 53, unable to complete his full term of office, or if a Chairman or Vice-Chairman avails himself of leave granted under section 51, the vacancy caused by such death, resignation or removal, or absence on leave, shall be filled by the appointment or election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be. [*Cf.* Ben. Act III of 1884, s. 27.]

Vacation of office by Chairman and Vice-Chairman after general election.

55. (*1*) Notwithstanding anything contained in section 52, the Chairman and the Vice-Chairman of a municipality shall be deemed to have vacated office as soon as the Commissioners have assembled at the meeting held under the provisions of sub-section (*1*) of section 42. [New; *cf.* Ben. Act III of s. 26A.]

(*2*) The Commissioners assembled shall thereupon appoint one of their number to preside at the meeting and shall proceed—

(*a*) to elect, or to request the Local Government to appoint, a Chairman, and

(*b*) to elect a Vice-Chairman :

Provided that if the Commissioners at the meeting decide to request the Local Government to appoint a Chairman, the Chairman shall thereafter resume his office and continue to hold the same until the new Chairman is appointed.

(Chapter III.—The Municipal Authorities—Clauses 61—63.)

(2) In the case of a salaried Chairman or Vice-Chairman, the Commissioners may grant such leave allowances as they may from time to time approve at a meeting:

Provided that the allowance so granted, together with the acting allowance, if any, of the officiating incumbent shall not exceed the salary fixed for the office.

Power of Local Government to make rules.

61. The Local Government may make rules prescribing the manner of holding the election of the Chairman and Vice-Chairman.

Establishment.

Appointment of subordinate officers.

62. (1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder, from time to time determine what officers in addition to the Chairman and Vice-Chairman and what servants of the Commissioners are necessary for the municipality, and may fix the salaries and allowances to be paid and granted to such officers and servants. [Cf. Ben. Act III of 1884, s. 46.]

(2) Subject to the scale of establishment approved by the Commissioners under sub-section (1), the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their place:

Provided as follows:—

(i) a person shall not be appointed to an office carrying a monthly salary of fifty rupees or more without the sanction of the Commissioners at a meeting, and an officer, or servant whose post carries a monthly salary of more than twenty rupees shall not be dismissed without such sanction;

(ii) no appointment carrying a salary of two hundred rupees per mensem or upwards shall be created without the sanction of the Local Government, and every nomination to, and dismissal from, any such appointment shall be subject to confirmation by the Local Government. [Cf. Ben. Act III of 1884, s. 61.]

Appointment of Secretary or Sanitary Officers on requisition by Government.

63. (1) Notwithstanding anything contained in section 62 the Local Government may, if they think necessary, require the Commissioners of any municipality or class of municipalites— [Cf. Ben. Act III of 1884, ss. 349D, 349K and 349F.]

(i) to appoint at a meeting—

(a) a Secretary,

(b) an Engineer,

(c) a Health Officer and one or more Sanitary Inspectors, or one or more Sanitary Inspectors.

(2) An officer appointed under sub-section (1) shall be of such class or possess such qualifications as may be prescribed, and shall be paid out of the Municipal Fund such salary and allowances, if any, as the Local Government may fix.

*(Chapter III.—The Municipal Authorities.—
Clauses 69—71.)*

(*b*) in the case of a candidate for any other office mentioned in sub-section (*1*)—by the authority which makes appointments to such office.

(*3*) If any person holding any of the offices mentioned in sub-section (*1*) is found, by the authorities respectively referred to in sub-section (*2*), to be seriously indebted to any person, he may be removed from his office—

(*i*) if he holds the office of Chairman or Vice-Chairman—by the Local Government, or

(*ii*) if he holds any other office—by the authority which appointed him.

Power to Commissioners to make rules.

69. The Commissioners at a meeting may, subject to the sanction of the Local Government, make rules as to— [*Cf.* C. M. Act, s. 56; Ben. Act III of 1884, ss. 49 and 351A (*l*).]

(*i*) the duties, appointment, leave, fining, suspension and removal of officers and servants of the Commissioners;

(*ii*) the nature and amount of security to be furnished by different classes of officers or servants of the Commissioners for the proper discharge of their duties.

Power of Local Government to make rules.

70. The Local Government may make rules—

(*a*) prescribing the qualifications of candidates for employment by the Commissioners, and declaring what circumstances shall be a disqualification for continuance of such employment; [*Cf.* Assam Act I of 1915, s. 89 (2) (*ix*).]

(*b*) prescribing the proportion of the pay and allowances of Government officers employed by the Commissioners which shall be borne by the Commissioners, and providing for the control of such officers; [*Cf.* Assam Act I of 1915, s. 89 (2) (*xv*).]

(*c*) prescribing the division of Health Officers and Sanitary Inspectors into classes or grades according to their qualifications; and [*Cf.* Ben. Act III of 1884, s. 349F.]

(*d*) regulating any other matter relating to candidates for employment by the Commissioners in respect of which this Act makes no provision or insufficient provision, and for which provision is, in the opinion of the Local Government, necessary.

Conduct of Business.

Ordinary meetings.

71. (*1*) The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman. [*Cf.* Ben. Act III of 1884, s. 88.]

(*2*) If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

(Chapter III.—The Municipal Authorities.—Clauses 81—83.)

(*3*) The Local Government may regulate by rules the relations to be observed between municipalities and other local authorities in any matter in which they are jointly interested.

Special Committees.

Formation of special committees.

81. (*1*) The Commissioners at a meeting may, from time to time, by specific resolution, appoint a special committee to inquire into and report upon any matter (to be specified in such resolution) which may arise in connection with any of the powers, functions or duties of the Commissioners and which is not at the time under consideration by a standing committee constituted under section 78. [*Cf.* C. M Act, s. 75.]

(*2*) The provisions of sub-sections (*2*), (*3*) and (*4*) of section 78 shall be deemed to apply to every such special committee, which shall confine its inquiry to the matter specified in the resolution whereby it was constituted.

Appointment of persons other than Commissioners as members of committees.

82. Notwithstanding anything contained in this Act, the Commissioners at a meeting may associate with any committee appointed under section 81 for such period as they may think fit any person of either sex who is not a Commissioner, but who may, in the opinion of the Commissioners, possess special qualifications for serving on such committee and such persons shall have a right to vote at meetings of the special committee, and shall be deemed to be members thereof for all purposes for such period : [*Cf.* Bom. Act III of 1901, s. 31. C. M. Act, s. 75.]

Provided that the number of persons so appointed on any committee shall not exceed one-third of the total number of the members of such committee.

Rules of Business.

Power to make rules as to business of Commissioners and committees.

83. The Commissioners at a meeting may, subject to the sanction of the Local Government, make rules as to— [*Cf.* Ben. Act III of 1884, s. 351A.]

(*a*) the time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given ;

(*b*) the conduct and control of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings ; [New.]

(*c*) the custody of the common seal ;

(*d*) the division of duties among the Commissioners and the powers to be exercised by members to whom particular duties are assigned ;

(*e*) the manner of appointment and the constitution of committees, and the regulation and conduct of their business ; and

(*f*) the delegation of powers or duties to committees or to the Chairman of a committee. [New.]

(Chapter IV.—Municipal property and finance.—Clauses 87-88.)

(*f*) all buildings erected by the Commissioners and all lands, buildings or other property transferred to the Commissioners by Government or acquired by gift, purchase or otherwise for local public purposes.

(*2*) The Local Government may, by notification, exclude any street, bridge, sewer or drain from the operation of this Act or of any specified section of this Act: [*Cf.* Ben. Act III of 1884, s. 30.]

Provided that, if the cost of the construction of the work shall have been paid from the Municipal Fund, such work shall not be excluded from the operation of this Act or of any specified section of this Act without the consent of the Commissioners at a meeting.

(*3*) All property, movable or immovable, and all interest of any kind whatsoever, derived under any of the enactments specified in Schedule I, or otherwise, and vested in, or held in trust for, the late Commissioners under the Bengal Municipal Act, 1884, shall become vested in the Commissioners, and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act. [*Cf.* Ben. Act III of 1884, s. 4.] Ben. Act III of 1884.

Transfer of private streets, etc., to Commissioners.

87. The Commissioners at a meeting may agree with the person in whom the property in any street, bridge, tank, *ghat*, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare by notice in writing put up thereon or near thereto, that such street, bridge, tank, *ghat*, well, channel or drain has been transferred to the Commissioners. [*Cf.* Ben. Act III of 1884, s. 31.]

Thereupon the property therein or the control thereof, as the case may be, shall vest in the Commissioners and such street, bridge, tank, *ghat*, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

Transfers of certain public institutions to the Commissioners.

88. (*1*) Any hospital, dispensary, school, rest-house, *ghat* or market within a municipality, not being private property or the property of a religious institution or society, and all medicines, furniture and other articles appertaining thereto, not being such property, may, by order of the Local Government duly published on the spot, be vested in the Commissioners of the municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer: [*Cf.* Ben. Act III of 1884, ss. 32 and 33.]

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the *Calcutta Gazette* and in Bengali within the municipality.

(*2*) If the Commissioners at a meeting, after publication of the said notice, object to the transfer to themselves of any hospital, dispensary, school, rest-house, *ghat* or market on the ground that their funds

(Chapter IV.—Municipal property and finance.— Clauses 94—96.)

Custody of Municipal Fund

94. Unless the Local Government otherwise direct, all sums received on account of the Municipal Fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality, to which they belong : [*Cf.* Ben. Act III of 1884, s. 83.]

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the Local Government.

Priority of payments on account of loans, trusts, establishment and audit.

95. Except as is otherwise provided in this Act, the Commissioners shall set apart and apply annually out of the Municipal Fund— [*Cf.* Ben. Act III of 1884, s. 68.]

(*a*) firstly, such sum as may be required for the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914; [*Cf.* U. P. Act II of 1916, s. 120 (*3*) (*b*).] IX of 1914.

(*b*) secondly, such sum as is required for the discharge of the liabilities and obligations arising from any trust legally imposed upon or accepted by the Commissioners ; [*Cf.* U. P. Act II of 1916, s. 120 (*3*) (*a*).]

(*c*) thirdly, such sums as they are by this Act required to provide for payment of the salaries and allowances of their own establishment, including such contributions as are referred to in section 65 ;

(*d*) fourthly, such sum as the Local Government may direct towards the cost of audit, towards the cost of establishment in any office of account or in any treasury and towards the salary and cost of establishment of any assessor or other special officer who may be appointed under this Act.

Purposes to which Municipal Fund is applicable.

96. (*1*) Subject to the charges specified in section 92, and subject to the payment of other sums, charges and costs necessary for carrying this Act into effect or duly directed or sanctioned for payment from the Municipal Fund by or under any of the provisions of this Act or under any other enactment for the time being in force, the Commissioners at a meeting may apply the Municipal Fund to any of the following purposes within the municipality, that is to say— [*Cf.* Ben. Act III of 1884, s. 69.]

(*i*) the construction, diversion, maintenance and improvement of streets, tramways, bridges, squares, gardens, tanks, *ghats*, wells, channels, drains, latrines and urinals; [*Cf.* Ben. Act III of 1884, s. 69 (*i*).]

(*ii*) lighting; [*Cf.* Ben. Act. III of 1884, s. 69 (*iii*).]

(*iii*) water-supply ;

(*iv*) conservancy and drainage including out-fall works and sewage disposal ;

(*v*) the acquiring, keeping and equipping of open spaces for purposes of ventilation, or for the promotion of physical exercise and public recreation ; [*Cf.* Ben. Act III of 1884, s. 69 (*vii*).]

(Chapter IV.—Municipal property and finance.—Clause 97.)

Power to Commissioners to incur expenditure beyond the limits of the municipality.

97. Notwithstanding anything contained in section 96, the Commissioners at a meeting may, with the sanction of the Local Government or any officer duly authorized by them in this behalf,— [*Cf.* Bom. Act III of 1901, s. 52; Ben. Act III of 1884, ss. 70, 279.]

(*a*) incur expenditure beyond the limits of the municipality—

(*i*) in the acquisition of land, or

(*ii*) in the construction, maintenance or repair of works,

for the purpose of obtaining a supply of water or of lighting required for the inhabitants of the municipality, or for establishing places for the disposal of the dead or of establishing slaughter-houses or places for the disposal of night-soil or sewage or carcasses of animals beyond the said limits or for drainage works or for dairy-farms and grazing-grounds or for any other purpose calculated to promote the health, safety or convenience of the inhabitants of the said municipality ; or

(*b*) make a contribution towards expenditure incurred by the Commissioners of any other municipality, or incurred out of any public funds for any of the purposes mentioned in section 96 or for measures affecting the health, comfort or convenience of the public and calculated to benefit the residents within the limits of the contributing municipality or towards the salary of any officer under any other authority whose services are employed by them ; or

(*c*) create scholarships tenable outside the limits of the municipality :

Provided that nothing in this section, or in any other provision of this Act, shall be deemed to make it unlawful for the Commissioners of a municipality, when with such sanction as aforesaid they have constructed works beyond the limits of the said municipality for the supply of water or lighting or for drainage as aforesaid,—

(*a*) to supply or extend to, or for the benefit of, any person or buildings or lands in any place, whether such place is or is not within the limits of the said municipality, any quantity of water or of gas or electric current not required for the purposes of this Act within the said municipality or the advantages afforded by the system of such drainage works, on such terms and conditions, with regard to payment and to the continuance of such supply or advantages as shall be settled by agreement between the Commissioners and such person or the owner or occupier of such buildings or lands ; or

(Chapter IV.—Municipal property and finance.— Clauses 106—108.)

(2) Where any expenditure under any head providing for the refund of taxes is incurred in excess of the amount passed under that head, provision shall be made without delay for such expenditure by the variation or alteration of the budget.

Power of Local Government, if work estimated to cost more than ten thousand rupees.

106. If any work is estimated to cost above ten thousand rupees, the Local Government may require the plans and estimates of such work to be submitted for their approval, or for the approval of any officer of Government, before such work is commenced; and may require statements of the progress and completion of such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as they may prescribe, for their appoval, or for the approval of such officer. [Cf. Ben. Act III of 1884, s. 79.]

III.—GENERAL.

Disposal of Municipal Fund and property, on sub-division, union or withdrawal of municipalities.

Apportionment and disposal of municipal property upon a sub-division or union of municipalities.

107. When two or more municipalities are united or a municipality is subdivided by a notification under section 8 the Municipal Funds or Fund, and all property vested in the Commissioners of the municipalities or municipality concerned shall be consolidated, or apportioned in such manner as the Local Government may direct. [Cf. Ben. Act III of 1884, s. 9B.]

Disposal of fund and property on exclusion of local area from municipality or withdrawal of municipality from Act.

108. (*1*) When a local area is excluded from a municipality by a notification under section 8, the Local Government shall, after consulting the Commissioners, frame a scheme determining what portion of the balance of the Municipal Fund and other property vested in the Commissioners shall vest in His Majesty for the benefit of the inhabitants of the local area and in what manner the liabilities of the Commissioners shall be apportioned between the Commissioners and the Secretary of State in Council; and on the publication of such scheme in the *Calcutta Gazette* such property and liability shall vest and be apportioned accordingly. [Cf. Pun. Act III of 1911, s. 8; C. P. Act XV of 1903, s. 7.]

(2) When the whole area comprised in any municipality is withdrawn from the operation of this Act by a notification under section 8, the balance of the Municipal Fund and all other property at the time of the publication of the notification vested in the Commissioners shall vest in His Majesty and the liabilities of the Commissioners shall be transferred to the Secretary of State for India in Council.

(3) All property vested in His Majesty under this section shall be applied, under the orders of the Local Government, to the discharge of the liabilities imposed on the Secretary of State for India in Council thereby or for the promotion of the safety, health, welfare or convenience of the inhabitants of the area affected.

(Chapter V.—Municipal taxation.—Clause 113.)

Provided that with the sanction of the Local Government the rate on holdings in any municipality may be imposed at a higher rate;

(*b*) on any holding which is used exclusively as a place of public worship, or as a mortuary or which is duly registered as a public burial or burning ground under this Act. [*Cf.* Ben. Act III of 1884, s. 98.]

(*2*) The Commissioners at a meeting may, either wholly or partially, exempt from the rate on holdings any holding which is used exclusively for purposes of public charity.

(*3*) Where the aggregate annual value of all the holdings held by any one owner within a municipality does not exceed six rupees, the rate on holdings shall not be imposed on any of the holdings of the said owner. [*Cf.* Ben. Act III of 1884, s. 85 (*b*).]

(*4*) The Local Government may, at any time, include in, or exclude from, Schedule V the name of any municipality.

Restrictions on the imposition of the water and lighting rates.

113. (*1*) The imposition of a water-rate or of a lighting-rate shall be subject to the following restrictions, namely,—

(*a*) that the rate shall be imposed only on holdings within an area for the supply of water to which, or for the lighting of which, as the case may be, a scheme involving the laying of pipes, wires, cables or other similar apparatus has been sanctioned by the Local Government: [*Cf.* Ben. Act III of 1884, ss. 371D, 308, 319.]

Provided that where the Commissioners—

(*i*) distribute the supply of water by means of water-carts or other like agency or provide a water-supply, approved by the Local Government, by means of wells or tanks or other reservoirs, or

(*ii*) provide kerosine or acetelyne lamps, or such other means of lighting as may be approved by the Local Government;

the Commissioners at a meeting may impose in case (*i*) a water-rate and in case (*ii*) a lighting-rate under such conditions and limitations as may be prescribed by the Local Government;

(*b*) that the rate shall not be imposed on land used exclusively for purposes of agriculture, or on any holding consisting only of tanks, or, in the case of the water-rate on any holding, no part of which is within a radius, to be fixed by the Commissioners at a meeting, from the nearest standpipe or other supply of water available to the public; [*Cf.* Ben. Act III of 1884, s. 279 (*3*), proviso.]

(*c*) that without the sanction of the Local Government the water-rate shall not be levied at more than seven-and-a-half *per centum* and the lighting-rate at more than three *per centum* on the annual value of holdings; [*Cf.* Ben. Act III of 1884, s. 309.]

(*Chapter V.—Municipal taxation.—Clauses 118—122.*)

(*b*) in the case of a total exemption, by means of the deduction from such total amount of the whole amount assessed on account of the single rate in respect of which exemption has been granted.

Assessment of rates on the annual value of holdings.

Annual value of holdings.

118. (*1*) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let. [*Cf.* Ben Act III of 1884, s. 101.]

(*2*) If such gross annual rental cannot, in the opinion of the assessor, be easily estimated or ascertained, the annual value of such holding shall be deemed to be an amount which may be equal to, but may not exceed, seven-and-a-half *per centum* on the actual cost of erection of the building or buildings erected on such holding *plus* a reasonable ground rent for the land comprised in the holding :

Provided that, where the actual cost so ascertained exceeds one *lakh* of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one *lakh* of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section 123.

(*3*) The value of any machinery or furniture which may be on a holding shall not be taken into consideration in estimating the annual value of such holding under this section.

(*4*) The Local Government may direct that the proviso to sub-section (*2*) shall not have effect in any municipality which they may name in this behalf.

Power of Commissioners to decide questions arising out of the definition of "holding".

119. For the purpose of, and subject to, clause (*22*) of section 3— [New.]

(*a*) if a question arises whether any land is included within one holding, the decision thereof shall rest with the Commissioners at a meeting;

(*b*) the Commissioners at a meeting shall determine what class of ownership shall be accepted as the test for determining whether lands within a municipality are held under one title or agreement ;

and the decision of the Commissioners shall be final.

Taxes by whom payable.

120. Except as otherwise provided by this Act, any rate which is assessed on the annual value of a holding shall be payable by the owner of the holding. [*Cf.* Ben. Act III of 1884, ss. 103, 286 and 322.]

Preparation of valuation list.

121. When it has been decided to impose any rate to be assessed on the annual value of holdings, the assessor, after making such inquiries as may be necessary, shall determine the annual value of all holdings within the municipality in the manner provided in this chapter, and shall enter such value in a valuation list. [*Cf.* Ben. Act III of 1884, ss. 96, 101.]

Returns required for ascertaining annual value.

122. (*1*) The assessor, in order to prepare the valuation list, may, whenever he thinks fit, by notice require the owners or occupiers of all holdings to [*Cf.* Ben. Act III of 1884, s. 99.]

(Chapter V.—Municipal taxation.—Clauses 127—130.)

(*4*) Every alteration made under sub-section (*1*) shall be signed by the Chairman or Vice-Chairman and subject to the result of an application under section 136, shall take effect from the beginning of the quarter next following that in which the alteration was made, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list. [*Cf.* Ben. Act III of 1884, ss. 97A, 108 and 109.]

Conclusiveness of entries in list.

127. An entry in an assessment list shall be conclusive proof— [*Cf.* U. P. Act II of 1916 s. 146.]

(*a*) for any purpose connected with a rate or rates to which the list refers, of the amount leviable in respect of any holding during the period to which the list relates, and

(*b*) for the purpose of assessing any other municipal rate, of the annual value of any holding during the said period.

Power to assess building and lands together, where land is let on a building lease

128. (*1*) If any house belongs to one owner and the land on which it stands and any adjacent land which is usually occupied therewith belongs to another, the Commissioners may treat such house and land as a single holding and assess them to rates accordingly. [*Cf.* Ben. Act III of 1884, s. 104.]

(*2*) The total amount of the rate or rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate or rates so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

(*3*) In case of dispute the Commissioners shall determine what amount the owners of the house and of the land shall pay respectively and the decision of the Commissioners shall be final.

Power to reduce rates in cases of excessive hardship.

129. Whenever, from the circumstances of the case, the levy of a rate or rates on any holding in the municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same: [*Cf.* Ben. Act III of 1884, s 106.]

Provided that such reduction or remission shall not, unless renewed by the Commissioners at a meeting, have effect for more than one year. [New]

Remission or refund on account of vacant holdings.

130. (*1*) When any holding has been unoccupied and unproductive of rent for sixty or more consecutive days the Commissioners shall remit, and if the rate or rates have been paid, shall refund three quarters of the amount due on account of such period : [*Cf.* Ben. Act III of 1884, ss. 110, 282 and 283; Pun. Act III of 1911, s. 72.]

Provided that—

(*i*) the person liable to pay the rate or rates or his agent has given to the Commissioners notice in writing of the vacancy and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners; and

(*ii*) the amount of rate or rates to be remitted or refunded shall not be calculated from any date prior to the date of the delivery of such notice.

(Chapter V.—Municipal taxation.—Clauses 137—142.)

Hearing and determination of applications by committee.

137. *(1)* Every application presented under section 136 shall be heard and determined by a committee consisting of the Chairman, a Commissioner appointed by the Commissioners at a meeting and a person appointed by the Local Government. [New; *cf.* Ben. Act III of 1884, s. 114.]

(2) Such committee, after taking such evidence and making such inquiry as it may deem necessary, may pass such order as it thinks fit in respect of such application.

(3) The decision of the committee, or of a majority of the members thereof in such cases, shall be final.

Assessment to be questioned only under Act.

138. No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided. [*Cf.* Ben. Act III of 1884, s. 116.]

Payment of rate how affected by objections to valuation.

139. *(1)* When an objection to an assessment or valuation has been made under section 136 the rate shall, pending the final determination of the objection, be paid on the previous assessment or valuation. [*Cf.* C. M. Act, s 164.]

(2) If, when the objection has been finally determined, the previous assessment or valuation is altered, then—

(*a*) any sum paid in excess shall be refunded or allowed to be set off against any present or future demand of the Commissioners under this Act; and

(*b*) any deficiency shall be deemed to be an arrear of the rate and recoverable as such.

Recovery of taxes.

Office hours for payment of taxes.

140. By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business. [*Cf.* Ben. Act III of 1884, s. 117.]

Amount of tax payable, and tax to be paid in advance

141. *(1)* Unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act, the amount entered in the lists the notice relating to which is published under section 135, shall be deemed to be the amount due from any person on account of any rate on the annual value of holdings. In case of such subsequent alteration the amount to which the assessment or rating is so altered shall be deemed to be the amount due. [*Cf.* Ben. Act III of 1884, s. 118.]

(2) Such rate shall be payable in quarterly instalments and every such instalment shall be deemed to be due on the first day of the quarter in respect of which it is payable. [*Cf.* Ben. Act III of 1884, s. 322.]

Receipts to be given.

142. For all sums paid on account of any tax, toll, fee or rate under this Act a receipt stating the amount and the tax, toll, fee or rate on account of which is paid shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts. [*Cf.* Ben. Act III of 1884, s. 119.]

(*Chapter V.—Municipal taxation.—Clauses 149—155.*)

Commissioners to keep account of distresses and sales.

149. The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes, tolls, fees and rates under this Act. [*Cf.* Act III of 1884, s. 126.]

Power to Commissioners to bring suits in place of distress.

150. Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, toll, fee or rate the Commissioners may sue the person liable to pay the same in any court of competent jurisdiction. [*Cf.* Ben Act III of 1884, s. 129.]

Irrecoverable taxes.

151. The Commissioners may order to be struck off the books the amount of any tax, toll, fee or rate which may appear to them to be irrecoverable. [*Cf.* Ben Act III of 1884, s. 130.]

Certain persons prohibited from purchasing at sales.

152. All Commissioners, municipal officers and servants, and all *chaukidars*, constables and other officers of police are prohibited from purchasing any property at any sale made under this chapter. [*Cf.* Ben Act III of 1884, s. 125.]

Recovery in special cases.

Recovery from occupier of tax due from non-resident owner and deduction from rent.

153. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner is not resident within the municipality, or the place of abode of such owner is unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct from the next and following payments of his rent, the amount which may be so paid by or recovered from him : [*Cf.* Ben Act III of 1884, s. 105.]

Provided that no arrear of rate shall be so recovered from the occupier of any holding if it has remained due from the owner thereof for more than one year or if it is due on account of any period during which such occupier was not in occupation of such holding :

Provided also that if any such holding is occupied in severalty by more than one person, the sum recovered from any one of such persons shall not exceed such amount as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding. [*Cf.* Ben Act III of 1884, s. 323.]

Recovery by owner from tenant of three-fourths of certain rates.

154. When the owner of a holding has paid water-rate, lighting-rate or conservancy-rate in respect thereof it shall be lawful for him, if there is but one occupying tenant of the entire holding, to recover from such tenant three-fourths of the entire amount of the rate which has been so paid by such owner, and if there is one occupying tenant of a part of the holding or more than one occupying tenant of the holding, then to recover from such tenant or each of such tenants such sum as shall bear to three-fourths of the entire rate paid by the owner the same proportion as the value of the portion of the holding in the occupation of such tenant bears to the entire value of the holding. [*Cf.* Ben. Act III of 1884, ss. 231, 286, 313 and 323.]

Recovery as rent of rate paid by owner.

155. Every owner who, under the provisions of section 154, is entitled to recover any sum from any occupying tenant of any holding or of any portion thereof shall have for the recovery of such sum all such and the same remedies, powers, rights and [*Cf.* Ben. Act III of 1884, ss. 286, 314 and 324.]

(Chapter V.—Municipal taxation.—Clauses 165—170.)

kept by such persons, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 156 and 158.

Preparation of list of persons licensed.

165. The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year a license has been given, and of the carriages, horses and other animals in respect of which they have paid the tax. [*Cf.* Ben. Act III of 1884, s. 139.]

Power to inspect stable, etc., and to summon persons liable to the payment of the tax.

166. (*1*) The Commissioners, or any person authorized by them in this behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach-house, or any place wherein they may have reason to believe that there is any carriage, horse or other animal liable to the tax, for which a license has not been taken out. [*Cf.* Ben. Act III of 1884, s. 140.]

(*2*) The Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses and other animals in respect of which such person is liable to be taxed.

Refund of tax in certain cases.

167. On proof being given to the satisfaction of the Commissioners that a carriage, horse or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse or other animal has not been kept or used in the municipality bears to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such keeping or use of such carriage, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed. [*Cf.* Ben. Act III of 1884, s. 141.]

Prohibition of double fee.

168. Nothing in sections 156 to 167 shall be deemed to authorize the levy of more than one fee for the same period in respect of any carriage, horse or other animal which is kept or used in the ordinary course of business in more than one municipality. [*Cf.* Ben. Act III of 1884, s. 141A.]

Meaning of "used in the ordinary course of business."

169. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business, within the meaning of section 156, if it is used on business on an average thrice a week. [*Cf.* Ben. Act III of 1884, s. 141B.]

The dog tax.

Tax on dogs.

170. (*1*) When it has been determined that a tax on dogs shall be imposed, the Commissioners at a meeting shall, by a notice to be published at least one month before the beginning of the half-year in [New.]

(*Chapter V.—Municipal taxation.—Clauses 179 180.*)

state in the notice; and, if any registration fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(*3*) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction:

Provided that, if at any time before the sale is concluded, the person whose cart and animals, if any, have been seized tenders, to the Commissioners, or to the person authorized by them to sell the property, the amount of all the expenses incurred and the registration fee payable by him, the Commissioners shall forthwith release the property so seized.

(*4*) Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart and animals, if any, seized under this section, may be devoted to the payment of any fine imposed for a breach of the provisions of section 177; and any property which has been seized under this section may be sold for the realization of any such fine.

Carts used or registered in more than one municipality.

179. (*1*) Nothing in sections 172 to 178 shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality. [Cf. Ben. Act III of 1884, s. 147A.]

(*2*) When carts not kept within any municipality are so used in more than one municipality, the Local Government may, if they think fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

(*3*) Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality:

Provided that such right is claimed by notice to the other municipality or municipalities concerned within two months of the date on which the fee becomes due.

(*4*) Where any dispute arises between the Commissioners of any two or more municipalities regarding any claim made under sub-section (*3*) of this section the matter shall be referred to the decision of the Local Government and the decision of the Local Government shall be final.

Meaning of "used in the ordinary course of business."

180. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 172 to 179, if it is used on business on an average twice a week. [Cf. Ben. Act III of 1884, s. 147B.]

(*Chapter V.—Municipal taxation.—Clauses 191—194.*)

each year publish, by causing it to be posted up at their office, an abstract account showing—

(*i*) the amount of expenses incurred in the construction of such bridge and in the maintenance of the same;

(*ii*) the amount of interest which has accrued due thereon, at the annual rate of *six per centum*; and

(*iii*) the amount which has been received from the profits of the said toll-bar since its establishment.

And, as soon as such expenses and interest shall have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied on such bridge.

Rates of tolls be established and published.

191. When it has been determined that tolls shall be levied on any such bridge, the Commissioners at a meeting shall from time to time make and publish an order, with the sanction of the Commissioner of the Division, specifying rates at which such tolls shall be levied. [*Cf.* Ben Act III of 1884, s. 160.]

Power of collector lessee in case of refusal to pay toll

192. Any collector or lessee of tolls may refuse to allow any person to pass through any municipal toll-bar until the proper toll has been paid. [*Cf.* Ben Act III of 1884, s 161.]

Penalty for refusing to pay or avoiding payment of toll.

193. No person shall drive any carriage, cart or animal (not exempted from toll) through a toll-gate, refuse to pay the toll, or with intent to evade payment of the toll, fraudulently avoid passing through such toll-gate as provided in this Act. [*Cf.* Ben. Act III of 1884, s 162.]

In case of non-payment of toll, vehicle, etc., may be seized and sold.

194. (*1*) If the toll due on any carriage, cart or animal is not paid on demand, the person authorized to collect the same may seize such carriage, cart or animal, or any part of its load of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners. [*Cf.* Ben Act III of 1884, 163.]

(*2*) After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice; and if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property seized, for discharge of the toll, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(*3*) If the load or sufficient part thereof consists of articles which are subject to speedy and natural decay or consists of livestock, that load or part thereof, may forthwith be sold under orders of the Commissioners.

(*4*) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction:

Provided that, if at any time before the sale has been concluded, the person whose property has been

CHAPTER VI.

Streets.

General.

Certain provisions relating to streets to be applied only to certain municipalities.

204. The provisions contained in sections 205 to 208 and in sections 211 to 218 shall not apply to any municipality, unless and until they have been expressly extended thereto by the Local Government on application of the Commissioners at a meeting. [New.]

Building-lines and street alignments for public streets.

Power to Commissioners to prescribe building-line and street alignment.

205. (*1*) If the Commissioners at a meeting consider it expedient to prescribe for any public street a building-line or a street alignment, or both a building-line and a street alignment, they shall give public notice of their intention to do so: [*Cf.* C. M. Act, s. 302.]

Provided that no building-line shall ordinarily be prescribed for any street laid out and made before the commencement of this Act.

(*2*) Every such notice shall specify a period within which objections will be received, and a copy of such notice shall be sent by post to every owner of premises abutting on such street who is registered in respect of such premises on the books of the municipality:

Provided that failure or omission to serve such notice on any owner shall not invalidate proceedings under this section.

(*3*) The Commissioners shall consider all objections received within the said period and shall hear any objector who comes forward within such period as they may fix in this behalf, and may then make an order prescribing a building-line or a street alignment, or both a building-line and a street alignment, for such public street.

A register or book with plans attached shall be kept by the Commissioners showing all public streets in respect of which a building-line or street alignment has been prescribed, and such register shall contain such particulars as to the Commissioners may appear to be necessary and shall be open to inspection by any person upon payment of such fee as may from time to time be fixed by the Commissioners at a meeting.

(*4*) A building-line shall not be prescribed so as to extend further back than the main front wall of any building (other than a boundary wall) abutting on the street at its widest part.

(*5*) Every order made under sub-section (*3*) shall be published in the *Calcutta Gazette*, and shall take effect from the date of such publication.

Restrictions on erection of, or addition to, buildings or walls within street alignment or building-line.

206. (*1*) No portion of any building or boundary wall shall be erected or added to within a street alignment prescribed under section 205: [*Cf.* C. M. Act, s. 303.]

Provided that the Commissioners at a meeting may, in their discretion, permit additions to a building to be made within a street alignment, if such additions merely add to the height of, and rest upon, an existing

(*Chapter VI.—Streets.—Clauses 211—213.*)

(*2*) In determining such compensation allowance shall be made for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street, square or garden at or about the same time that the public street, square or garden on account of which the compensation is paid is closed.

Projected public streets.

Projected public streets.

211. (*1*) The Commissioners at a meeting may from time to time prepare schemes and plans of projected public streets, showing the direction of such streets, the street alignment and building-line on each side of them, their intended width and such other details as may appear desirable. [*Cf.* C. M. Act, s. 308.]

(*2*) The width of such projected streets, inclusive of space for foot-paths, shall not be less than forty feet or, in a *bustee*, twenty feet:

Provided that—

(*a*) the Commissioners at a meeting may for special reasons reduce the width of any projected street but not so as to be less than thirty feet or, in a *bustee*, sixteen feet; and

(*b*) this sub-section shall not apply in any case in which the projected street, or any part thereof, runs along an existing street and the Commissioners consider it impracticable to widen the street to the extent of forty feet or twenty feet, as the case may be.

Provisions of section 206 to apply to projected public streets.

212. The provisions of section 206 shall, with all necessary modifications, apply to public streets projected under section 211. [*Cf.* C. M. Act, s. 309.]

Special provisions as to private streets.

Making of new private streets.

213. (*1*) Any person intending to make or lay out a new private street shall send to the Commissioners a written notice, with plans and sections, showing the following particulars of the proposed street, namely:— [*Cf.* C. M. Act, s. 314.]

(*a*) the level, width and alignment thereof, and

(*b*) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining and lighting the street.

(*2*) The provisions of this Act as to the width of public streets and the height of buildings abutting thereon, and as to projected public streets, shall respectively apply in the case of streets referred to in sub-section (*1*); and all the particulars referred to in that sub-section shall be subject to approval by the Commissioners at a meeting:

Provided that the Commissioners at a meeting may allow a private street to be made or laid out of a width less than forty feet but not less than twenty feet, and, if the street is less than two hundred feet in length, the maximum width of such street may ordinarily be taken to be thirty feet instead of forty feet.

(*Chapter VI.—Streets.—Clauses 220—222.*)

premises vested in them have, for want of repairs or otherwise, become unsafe for use by the public, take all necessary precautions against accident by—

(*a*) shoring up and protecting adjacent buildings, and

(*b*) fixing bars, chains, posts or other barriers across or in any street for the purpose of preventing or diverting traffic during such construction or repair, and

(*c*) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

(*2*) No person shall, without the authority or consent of the Commissioners, in any way interfere with any arrangement or construction made by the Commissioners under sub-section (*1*) for guarding against accident.

Hoardings to be set up during repairs.

220. (*1*) Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public street will be obstructed or rendered inconvenient or dangerous by means of such work, before beginning the same, cause hoardings or fences to be put up to the satisfaction of the Commissioners in order to separate the house where such works are being carried on from the street, and shall keep such hoardings or fences standing and in good condition, to the satisfaction of the Commissioners during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night: [*Cf.* Ben. Act III of 1884, s. 235.]

Provided that, no person shall put up a hoarding or fence without the written permission of the Commissioners, nor shall he keep up the said hoarding or fence for a time longer than allowed in the said written permission.

(*2*) Any person who contravenes the provisions of sub-section (*1*) or who, without written permission erects or sets up any hoarding, scaffolding or fence whatsoever, or who, being permitted, fails to put up such hoarding, scaffolding or fence or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoarding or fence is standing, keep the same sufficiently lighted during the night; or who does not remove the same within eight days when directed by the Commissioners, shall be liable to fine as provided in this Act. [*Cf.* Ben. Act III of 1884, s. 278 (*1*).]

Leave to deposit materials temporarily on, or to excavate or close, a street.

221. The Commissioners may grant permission to any person, for such period and on such conditions as they may think fit, to deposit any movable property on any public street, or to make an excavation in any public street, or to enclose the whole or any part of any street, and may charge such fees as they may fix for such permission: [*Cf.* Ben. Act III of 1884, s. 234.]

Provided that such person shall make due provision for the passage of the public and shall erect sufficient fences to protect the public from injury, danger or annoyance, and shall light such fences from sunset to sunrise sufficiently for such purpose.

Power to close a street or part of a street for repairs or other public purpose.

222. The Commissioners may close temporarily any public street or part thereof for the purpose of repairing such street, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other public purpose: [*Cf.* Ben. Act III of 1884, s. 201.]

(Chapter VI.—Streets.—Clause 229.)

or if where a notice has been posted up under sub-section *(2)* the projection, obstruction or encroachment is not removed within the period specified in such notice,

the Magistrate may, on the application of the Commissioners, order that the projection, obstruction or encroachment be removed, and thereupon the Commissioners may, notwithstanding anything contained in sections 500 to 504, remove such projection, obstruction or encroachment,

and the expenses thereby incurred shall be recovered from the person who erected or set up the same or by the sale of the materials removed.

(4) No person shall be entitled to compensation in respect of the removal of any projection, obstruction or encroachment under this section.

Power to Commissioners to remove or alter verandah, etc., or fixtures attached to building which project, etc., over public street or land.

229. *(1)* When any verandah, platform or other similar structure or any fixture attached to a building so as to form part of the building, whether erected before or after the commencement of this Act, causes a projection, encroachment or obstruction over or on any house-gully or public street or any land vested in the Commissioners they may, by written notice, require the owner or occupier of the building to remove or alter such structure or fixture.

[*Cf.* C. M. Act, s. 299 Ben. Act III of 1884, ss. 204 and 283.]

(2) If the expense of removing or altering any such structure or fixture is paid by the occupier of the building in any case in which the same was not erected by himself, he shall be entitled to deduct any reasonable expense incurred for the purposes of such removal or alteration from the rent payable by him to the owner of the building.

(3) If the person on whom a notice is issued under sub-section *(1)* fails to comply with the requisition within the period specified therein, the Magistrate may, on the application of the Commissioners, order that such structure or fixture be removed or altered, and thereupon the Commissioners may carry into effect the order of the Magistrate, and recover from the owner or occupier of the building the cost thereby incurred:

Provided that if the owner or occupier proves that any such structure or fixture was erected before the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality or in the case of a municipality constituted under the Bengal Municipal Act, 1884, in which none of the aforesaid Acts was in force prior to the commencement of that Act, before the date of the constitution of that municipality, or, in the case of a municipality constituted after the commencement of this Act, before the date of the constitution of that municipality, the Magistrate shall order reasonable compensation to be paid to any person who suffers damage by the removal or alteration thereof.

Ben. Act III of 1864.
Ben. Act VI of 1868.
Ben. Act V of 1876.
Ben. Act III of 1884.

In determining the amount of compensation, the value of the land shall not be taken into consideration.

(Chapter VII.—Conservancy and Drainage.— Clauses 238—241.)

Appointed hours for placing rubbish, etc., on public street.

238. *(1)* The Commissioners at a meeting may from time to time publish an order prescribing the hours within which only an occupier of any house or land may place rubbish or offensive matter on the public street adjacent to his house or land in order that such rubbish or offensive matter may be removed by the servants of the Commissioners. [Ben. Act of 1884 s. 189.]

(2) No person shall place or allow his servant to place rubbish or offensive matter on a public street at other than the times appointed by the Commissioners under sub-section *(1)*. [*Cf.* Ben Act III of 1884, s 216.]

Removal of rubbish, etc., from premises.

239. *(1)* The Commissioners at a meeting may contract with the occupier of any premises to remove rubbish or offensive matter direct therefrom and may charge fees in this behalf.

(2) When building operations are being carried on in any premises, or when any premises are used for carrying on any manufacture, trade or business, the Commissioners may,— [*Cf.* C. M. Act, s. 373, Ben Act III of 1884, s 189.]

(a) by written notice, direct the occupier of such premises to collect all rubbish and offensive matter accumulating on such premises in the course of such operations, manufacture, trade or business and to remove the same, at such times, in such carts or receptacles, and by such routes as may be specified in the notice, to a place provided or appointed in this behalf by the Commissioners, or,

(b) after giving such occupier written notice of their intention so to do, themselves cause all such rubbish and offensive matter to be removed, and charge such occupier for such removal such periodical fee as they may specify in such notice:

Provided that the requisition under clause *(a)* shall not be enforced by the Commissioners, nor shall action be taken by them under clause *(b)* until the occupier of the premises has been given an opportunity of being heard within such time as may be specified in the written notice that is served on him.

Removal of offensive matter from or near street.

240. No person who, being the occupier of a house in or near a public street shall keep or allow to be kept, for more than twenty-four hours, or for more than such shorter time as may be fixed by the Commissioners at a meeting, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter in or upon such house, or in any outhouse, yard or ground attached to and occupied with such house, nor shall any person suffer such receptacle to be in a filthy or noxious state, or neglect to employ proper means to cleanse the same. [*Cf.* Ben Act III of 1884, s 217 *(1)*.]

Prohibition of allowing sewage, offensive matter or rubbish to be thrown or run into street or drain thereof.

241. No person shall—

(i) throw or put or cause or permit to be thrown or put, any sewage or offensive matter upon any street, or drop, pass or place, or cause to be dropped, passed, or placed, into [*Cf.* Ben. Act III of 1884, s. 279 *(1)* and *(2)*, C M. Act, s. 287 *(d)*, *(e)* and *(f)*.]

(Chapter VII.—Conservancy and Drainage.— Clauses 248—250.)

by-law or of any notice issued or direction given thereunder or without the written permission of the Commissioners at a meeting.

> Location of house-drains, privies, etc.

> [Cf. Ben. Act III of 1884, ss. 230, 231, 270, 271.]

248. No person shall, without the written permission of the Commissioners at a meeting, construct or keep any house-drain, service-privy, urinal or cess-pool within fifty feet of any tank, well, or water-course or any reservoir for the storage of water or construct any privy with a door or trap-door opening into any road or drain.

> Powers of Commissioners to inspect latrines, urinals, etc.

> [Cf. Ben. Act III of 1884, ss. 190 and 191; U. P. Act II of 1916, s. 270.]

249. (*1*) All latrines, urinals, sinks, cess-pools and drains shall be subject to the control of the Commissioners and the Commissioners or any officer authorized by them in this behalf may inspect any latrine, urinal, cess-pool, sink, drain or receptacle for sewage or offensive matter at any time between sunrise and sunset, after six hours' notice in writing to the occupier of the premises in which such latrine, urinal, cess-pool, sink, drain or receptacle is situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of inspection or of preventing or removing any nuisance arising from such latrine, urinal, cess-pool, sink, drain or receptacle.

(*2*) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the Commissioners, unless the latrine, urinal, cess-pool, drain or receptacle is found to be in bad order or condition, or to have been constructed in contravention of any provisions of, or made under, this or any other enactment, in which case such expense shall be recovered from the owner or occupier.

> Powers of Commissioners to require repair, alteration, removal of latrine, etc.

> [Cf. U. P. Act II of 1916, s. 267; Ben. Act III of 1884, ss. 192, 231, 225, 224, 229, 266, 270, 271.]

250. (*1*) The Commissioners may require by notice the owner or occupier of any land or building, within a period to be specified in the notice,

(*a*) to close, remove, alter, repair, disinfect or put in good order any cess-pool, drain or receptacle for sewage, offensive matter or rubbish pertaining to such land or building, to provide to their satisfaction access from a house-gully or lane to any service-privy or service-urinal in or on such land or building or to demolish any privy or urinal constructed, rebuilt or altered in or on such land or building in contravention of section 248 or any by-law framed under section 256 or section 264;

(*b*) to provide such cess-pools, drains or receptacles for sewage, offensive matter or rubbish, as should, in their opinion, be provided for the building or land whether in addition or not to any existing ones; or

(*c*) to cause any latrine or urinal provided for the building or land to be shut off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood.

(*2*) When requiring under sub-section (*1*) anything to be provided, altered or done, the Commissioners may specify in the notice the description of the thing to be provided, the pattern to conform with which the thing is to be altered, and the manner in which the thing is to be done.

(*Chapter VII.—Conservancy and Drainage.—Clauses 258—262.*)

Alteration of public drains.

258. (*1*) The Commissioners in pursuance of a decision arrived at at a meeting may, from time to time, enlarge, lessen, alter the course of, cover in or otherwise improve a municipal drain and may discontinue, close up or remove any such drain.

[*Cf.* U. P. Act II of 1916, s. 190; Ben. Act III of 1884, s. 198.]

(*2*) The exercise of the power conferred by subsection (*1*) shall be subject to the condition that the Commissioners shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

Use of public drains by private owners.

259. The owner or occupier of a building or land shall be entitled to cause his drains to empty into the municipal drains, provided that he first obtains the written permission of the Commissioners, and that he complies with such conditions, consistent with any by-law, as the Commissioners at a meeting prescribe, as to the mode in which and the superintendence under which the communications are to be made between private drains and municipal drains.

[*Cf.* U. P. Act II of 1916, s. 191.]

Power to order demolition of drain constructed without consent of Commissioners.

260. No person shall, without the written consent of the Commissioners first obtained, make or cause to be made, or alter, or cause to be altered, any drain or branch drain leading into any of the municipal sewers or drains or into any water-course, street or land vested in the Commissioners, and the Commissioners may cause any drain or branch drain so made or altered, to be demolished, altered, remade or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such drain.

[*Cf.* Ben. Act III of 1884, ss. 226 and 272.]

Group or block of buildings, etc., may be drained by a combined operation.

261. (*1*) If it appears to the Commissioners at a meeting that a group or block of buildings may be drained or improved more economically or advantageously in combination than separately, and if a municipal sewer of sufficient size already exists or is about to be constructed within one hundred feet of any part or such group or block of buildings, the Commissioners may cause such group or block of houses to be so drained and improved,

[*Cf.* Ben. Act III of 1884, s. 228, and C. M. Act, s. 259.]

and the expenses thereby incurred shall be recovered from the owners of such buildings, in such proportions as shall to the Commissioners seem fit.

(*2*) Not less than fifteen days before any such work is commenced the Commissioners shall give to each such owner—

(*a*) written notice of the nature of the proposed work;

(*b*) an estimate of the expenses to be incurred in respect thereof and of the proportion of such expenses payable by him.

Power to Commissioners to enforce drainage of undrained premises situate within one hundred feet of a municipal drain.

262. When any premises are, in the opinion of the Commissioners at a meeting, without sufficient means of effectual drainage, and a municipal drain or some place approved by the Commissioners for the discharge of drainage is situated at a distance not exceeding one hundred feet from any part of the said

[*Cf.* Ben. Act III of 1884, ss. 227, 271; C. M. Act, s. 260.]

(*Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 269, 270.*)

(*2*) When a scheme has been prepared for a municipality under sub-section (*1*), the Local Government may call upon the Commissioners of such municipality to show cause at a meeting why they should not be required to carry out the scheme.

(*3*) The Local Government shall consider any objections and suggestions which may be submitted by the Commissioners and, if satisfied that the execution and maintenance of the scheme will not subject the financial resources of the municipality to any undue strain, may, subject to the rules framed under section 297, sanction the scheme with such modifications, if any, as they may think proper and specify a period during which the scheme shall be carried out.

(*4*) If the scheme is not carried out within the period fixed, the Local Government may, by order, appoint some person to carry it out and may direct that the cost of the works including the remuneration of the person appointed, and of the supervising establishment, the cost of land acquisition and any other incidental charges shall be paid within such time as they may fix from the Municipal Fund, and may, if necessary, direct that any rate or rates authorized under this Act shall be levied or increased (but not so as to exceed any *maximum* prescribed in that behalf) and may further, or as an alternative, advance any sum of money, required in their opinion for the execution of the scheme, from the public funds on the security of the Municipal Fund and such advance shall be recoverable under the Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance. IX of 1914.

(*5*) The person appointed under sub-section (*4*) may, for the purpose of executing the scheme, exercise any of the powers conferred on the Commissioners by or under this Act, which are specified in that behalf in the order issued under sub-section (*4*).

Power to compel execution of joint drainage schemes, etc.

269. (*1*) If the Local Government are of opinion that the conditions described in sub-section (*1*) of section 268, prevail in two or more adjoining municipalities, or any part thereof and that, in the interests of efficiency and economy, a joint drainage, sewerage, lighting or water-supply scheme should be prepared for both or all such municipalities or any part thereof, they may cause a joint scheme to be prepared accordingly. [New.]

(*2*) All the provisions of section 268 shall apply *mutatis mutandis* to such joint scheme and the Local Government shall determine what proportion of the cost of preparing, executing, and maintaining such scheme shall be borne by the Commissioners of each municipality concerned.

Extension of drainage schemes, etc.

270. (*1*) Where the Local Government cause a scheme to be prepared under section 268 or section 269 and the Commissioners of the municipality or municipalities concerned and the local authority or local authorities of any other area or areas apply to have the scheme extended so as to serve such area or areas, the Local Government may, by order, notify their general [New.]

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 276—280.)

Power to permit connection to houses and lands.

276. (*1*) Subject to the prescribed conditions and restrictions and to such terms as the Commissioners may from time to time determine, the Commissioners at a meeting may— [*Cf.* Ben. Act III of 1884, ss 290, 291, 291, 302; B. & O. Act VII of 1922, s 303.]

(*a*) on the application of the owner or occupier of any house or land paying the water-rate or lighting-rate, as the case may be, make or cause, or permit to be made, communication or connections from any main, distribution pipe, cable or wire belonging to the Commissioners for the purpose of leading water, electricity or gas to such house or land, or

(*b*) on the application of the owner or occupier of any house or land make, or cause or permit to be made, any connection or communication to such house or land from any drain, sewer or channel constructed or maintained by or vested in the Commissioners.

(*2*) The Commissioners at a meeting may require the amount necessary for the execution through their own agency of any work under this section to be paid or deposited before such work is executed by them. [*Cf.* Ben. Act III of 1884, s. 302.]

Power to make or require connections in certain cases.

277. (*1*) The Commissioners at a meeting may, at any time, establish a connection or communication from any water-main, drain or sewer to any house or land, or may by notice require the owner or occupier of any such house or land to establish any such connection or communication, in such manner and within such time as the Commissioners, by notice in that behalf, may direct, at the cost of such owner or occupier. [*Cf.* Pun. Act III of 1911, s 136.]

(*2*) In any case in which a service-pipe from a main supplies water to two or more holdings, the Commissioners may, by written notice, require the owner of such holdings to lay down separate service-pipes for the separate holdings, and the expense of so doing shall be borne by all such owners in such proportions as may be determined by the Commissioners.

Power to establish meters and the like.

278. The Commissioners may establish meters for the purpose of testing the quantity or quality of any gas or electricity supplied to the house or land of any person to or for the use of any person or business. [*Cf.* Pun. Act III of 1911, s. 137.]

Attachment of meters.

279. For the purpose of measuring and recording the amount of water consumed, the Commissioners may affix a meter at the point of junction between the service-pipe of the consumer and the municipal main. [*Cf.* B & O. Act III of 1914, s. 32; Ben. Act III of 1884, s 295.]

Power to enter premises.

280. (*1*) Any officer authorized in this behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land for the purpose of inspecting or repairing any water, gas, electric or other installation and for taking readings of meters connected therewith. [*Cf.* Pun Act III of 1911, s. 206; Ben. Act III of 1884, s. 292.]

(*Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 290—292.*)

(*6*) The outgoing occupier shall ordinarily be liable to pay for any excess supplied up to the date of his vacating the premises;

and the incoming occupier's liability for any excess consumption of filtered water shall ordinarily accrue from the commencement of his occupation:

Provided that where no written notice is delivered to the Commissioners under sub-section (*4*), the Commissioners shall be entitled to realise from such incoming occupier the full proportionate amount of the charges for excess water consumed, on the basis of the next quarterly or other reading of the meter made after the occupation of the incoming occupier, or such less amount as the Commissioners may think fit, regard being had to the number of days in any quarter during which the premises were occupied by such incoming occupier, the number of inmates during that period and the amount of free allowance to which such occupier may be entitled under sub-section (*1*).

Inspection of works and pipes before connection.

290. (*1*) Before a connection for the supply of water from the distribution mains of the Commissioners to any premises is sanctioned, the Commissioners may cause all the works, pipes and fittings within the said premises to be inspected by an officer appointed by them in this behalf. [*Cf.* Ben. Act III of 1884, s. 301.]

(*2*) The cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners at a meeting shall from time to time direct.

(*3*) Until such officer has certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner a connection with the Commissioners' service-pipes shall not be permitted.

(*4*) Notwithstanding anything contained in this section, if at any time after a certificate has been granted under sub-section (*3*) the Commissioners are satisfied that any work, pipe or fitting is unsuitable or results in a waste of water, the Commissioners may require the person who provided such work, pipe or fitting, or the owner of the premises, to alter or add to them at his own cost. [B. & O. Act VII of 1922, s. 318(4).]

Permission to person outside the municipality to take water.

291. The Commissioners at a meeting may with the sanction of, and on such terms (if any) as may be approved by, the Local Government supply water to the Commissioners of another municipality or to a local authority or other person outside the municipality. [*Cf.* Ben. Act III of 1884, s. 300; Mad. Act V of 1920, s. 133.]

Water not to be taken out of municipality or wasted

292. No person— [*Cf.* Ben. Act III of 1884, ss. 298, 299, 300, 303.]

(*i*) shall take, or cause to be taken for use outside the limits of the municipality water supplied by the Commissioners, without the permission of the Commissioners given under section 291 or in contravention of any conditions which they may prescribe;

(*Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clause 297.*)

(*b*) the power of the Commissioners or the Local Government to accord sanction to such plans and estimates ; [*Cf.* Mad. Act V of 1920, s. 308 (2) (*h*).]

(*c*) the publication in the *Calcutta Gazette* of the particulars of, and the nature of any such, work or scheme, its cost, and the manner in which it is to be financed and carried out ;

(*d*) the size and nature of water-works, mains, pipes, cables, wires, drains, sewers or channels to be constructed or laid by the Commissioners for the supply of water, electricity or gas. or for drainage or sewerage ; [*Cf.* U. P. Act II of 1916, s. 235.]

(*e*) the maintenance of municipal water-works and of pipes and fittings in connection therewith ;

(*f*) the size and nature of the stand-pipes or pumps to be erected by the Commissioners and of the ferrules and all pipes, stand-pipes, stop-cocks, taps, hydrants and other fittings, whether within or outside any premises, that may be prescribed or necessary for the regulation of the supply and use of water, gas or electricity ; [*Cf.* Ben. Act III of 1884, s. 317.]

(*g*) the mains or pipes in which fire plugs are to be fixed and the places at which keys of the fire plugs are to be deposited :

(*h*) the periodical analysis by a qualified analyst of the water supplied by the Commissioners ;

(*i*) the conservation of, and the prevention of injury or contamination to, sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the municipality ;

(*j*) the manner in which connections with water-works or with the lighting, drainage or sewerage system of the Commissioners shall or may be constructed, altered or maintained, the fees to be levied for such connections and the person by whom they shall be paid, and the agency to be employed for such construction, alteration or maintenance ; [*Cf.* Ben. Act III of 1884, s. 318.]

(*k*) the rates at which the charges for water, gas or electricity supplied may be levied by the Commissioners and the use, maintenance and testing of meters and the rebate. if any, to be allowed where a meter is found to be defective ;

(*l*) the regulation of all matters and things connected with the supply and use of water,

(Chapter IX.—Buildings.—Clauses 303—306.)

(*b*) any building erected or intended to be erected by, or with the sanction of the Commissioners, for use solely as a temporary hospital for the reception and treatment of persons suffering from any infectious or contagious disease, and

(*c*) any hoarding or like means of protection (other than a masonry wall) which the owner of any premises certifies to the Chairman not less than seven days after its erection to have been erected for the purpose of preventing the threatened acquisition of any easement over his own premises or any portion thereof, provided that the stability of such hoarding or other means of protection is certified by the Chairman.

Application for sanction.

Application to erect building to be submitted in the prescribed form.

303. Every person who intends to erect a building shall first submit an application in the form prescribed in Schedule VI to the Commissioners together with such plans, specifications and other particulars as may be prescribed in that Schedule or in any rule or by-law made in this behalf.

[*Cf.*, Ben. Act III of 1884, ss. 237, 238, 240, 243, 244J, 271.]

Permission to execute work when to be given or refused.

304. (*1*) Within thirty days or, in the case of huts, within fifteen days after the receipt of any application made under section 303, or of any information or documents, which the Commissioners may reasonably require the applicant to furnish before deciding whether permission shall be granted to execute any work under the aforesaid section, the Commissioners shall, by written order, either—

(*a*) grant permission conditionally or unconditionally to execute the work, or

(*b*) refuse, on one or more of the grounds mentioned in section 308, to grant such permission.

(*2*) When the Commissioners grant permission conditionally under clause (*a*) of sub-section (*1*), they may in regard thereto impose such conditions, consistent with this Act, as they may think fit.

(*3*) Where permission has been refused under sub-section (*1*), an appeal shall lie to the Commissioners at a meeting, provided that no order passed by the Commissioners at a meeting in respect of such appeal shall relax the provisions of section 308 or of Schedule VI or of any rule or by-law made under this Act.

[*Cf.* C. M. Act, Sch. XVII, r. 57; Ben. Act III of 1884, ss. 238, 243, 244L, 244M.]

Permission to be implied if Commissioners default in coming to a decision.

305. If within the period prescribed by section 304 the Commissioners have neither granted nor refused to grant permission to execute any work, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or of Schedule VI or of any rule or by-law applying thereto.

[*Cf.* C. M. Act, Sch. XVII, r. 58; Ben. Act III of 1884, ss. 238, 244A.]

Notice after completion of work.

306. Within one month after the completion of the erection of a new building (other than a hut) the owner of the building shall send to the Commissioners a written notice of the fact of such completion

[*Cf.* C. M. Act, Sch. XVII, r. 30; Ben. Act III of 1884, ss. 217,

(*Chapter IX.—Buildings.—Clauses 312, 313.*)

Application of Act to alterations of, and additions to, buildings.

Application of Act to alterations of, and additions to, buildings.

312. (*1*) The provisions of— [*Cf.* C. M. Act, s. 330; Ben. Act III of 1884, ss. 240 and 244J.]

(*a*) this chapter,

(*b*) Schedule VI, and

(*c*) any rules or by-laws made under this Act,

relating to the erection of buildings, shall also apply to every material alteration of, or addition to, any building, but shall not apply to necessary repairs not involving any of the works which constitute a material alteration or addition.

(*2*) An alteration or addition in or to a building shall for the purposes of this chapter and of Schedule VI and of any rule or by-law, be deemed to be material if—

(*a*) it increases or diminishes the height of, the area covered by, or the cubical capacity of the building, or any part thereof, or reduces the height, area, or cubical capacity of any room in the building below the minimum prescribed in Schedule VI, or in any rule or by-law ; or

(*b*) it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene ; or

(*c*) it converts into a place for human habitation a building or part of a building originally constructed for other purposes ; or

(*d*) it is an alteration or addition declared by Schedule VI or by any rule or by-law made in this behalf to be a material alteration or addition.

(*3*) If any question arises as to whether any addition or alteration is a necessary repair not affecting the position, safety, stability, use, sanitary condition, or dimensions of a building or room, such question shall be referred to the Commissioners at a meeting and the decision of the Commissioners shall be final.

Rules.

313. (*1*) In alteration of, addition to, or cancellation of Schedule VI, the Local Government may make rules—

(*a*) for the regulation or restriction of the use of land as sites for building, and

(*b*) for the regulation and restriction of building and of alterations in, or additions to, buildings.

(*2*) When Schedule VI has been so altered, added to or cancelled, any reference made in this Act to the said schedule shall be construed as a reference to the schedule as amended under sub-section (*1*) or, if the schedule has been cancelled, to the rules substituted therefor.

(*Chapter IX.—Buildings.—Clause 316.*)

Order for demolition or alteration of buildings in certain cases.

316. (*1*) If the Commissioners are satisfied— [New; *Cf.* Ben. Act III of 1884, ss 238, 244, 244K 244S, 244V.]

(*a*) that the erection of any building—

(*i*) has been commenced without obtaining their written permission under section 304 otherwise than under the provisions of section 305, or

(*ii*) is being carried on or has been completed otherwise than in accordance with the particulars on which such permission or orders was or were based, or after such permission has been lawfully withdrawn, or

(*iii*) is being carried on or has been completed in breach of any provision contained in this Act or in Schedule VI or in any rules or by-laws made in this behalf or of any condition, modification, direction or requisition lawfully given or made under this Act or Schedule VI or under such rules or by-laws, or

(*b*) that any material alteration of, or addition to, any building has been commenced or is being carried on or has been completed in breach of any provision contained in this Act or Schedule VI or in any rules or by-laws made in this behalf, or

(*c*) that any alterations required by any notice issued under sub-section (*2*) of section 307, have not been duly made,

they may, in addition to any prosecution that may be instituted under this Act, apply to a Magistrate and such Magistrate may make an order directing that such erection, alteration, or addition, as the case may be, or so much thereof as has been executed unlawfully as mentioned in clauses (*a*), (*b*) or (*c*), or that any structure specified in the application or plans or specification submitted under section 203 as a structure to be demolished or altered before the new building was erected or the material alterations or additions were made shall—

(*i*) be demolished by the owner thereof or altered by him to the satisfaction of the Commissioners, as the case may require, or

(*ii*) be demolished or altered by the Commissioners at the expense of the said owner.

(*2*) The Magistrate may make any order under this section notwithstanding the fact that a valuation of such building has been made by the Commissioners under Chapter V for the assessment of any rate or rates, but shall not make any such order without giving the owner of the building to be so demolished or altered full opportunity of adducing evidence and of being heard in his defence.

CHAPTER X.

Bustees.

Preliminary.

Power to Commissioners to define limits of *bustee*.

320. (*1*) The Commissioners at a meeting may define the external limits of any *bustee*, and may from time to time alter such limits. [*Cf.* C. M. Act, s. 335.]

(*2*) None of the powers conferred by any of the following sections of this chapter shall be exercised in respect of— [*Cf.* C. M. Act, s. 336.]

(*a*) any *bustee* the total area of which, as comprised within the limits defined under sub-section (*1*), is less than two bighas, or

(*b*) any masonry building existing in a *bustee* at the time when a standard plan is approved or alignments are prescribed under the provisions of this chapter for such *bustee* as the case may be.

Sanitary measures with regard to bustees.

Power of Commissioners as to inspection of huts.

321. (*1*) If it appears to the Commissioners at a meeting that the condition of any *bustee* is insanitary or attended with risk of disease to the inhabitants of the neighbourhood, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage, the impracticability of scavenging or for any other reason, they may after giving notice to the owners of the *bustee* cause the locality to be inspected by two persons appointed in this behalf, one of whom shall be a registered medical practitioner or a person holding the diploma of Public Health and the other an engineer. [*Cf.* C. M. Act, s. 344; Ben. Act. III of 1884, s. 245.]

(*2*) The said persons shall forthwith—

(*a*) sign and submit a written report on the insanitary condition of the said *bustee*,

(*b*) annex to the report a plan approved by them as the standard plan of such *bustee*, and

(*c*) specify in a schedule to be attached to the said report, as the improvements considered necessary to remove or abate the insanitary condition of the *bustee*,—

(*i*) the huts, which should wholly or in part be removed ;

(*ii*) the streets, passages, drains and sewers which should be constructed ;

(*iii*) the means of lighting, water-supply, common bathing arrangements and common privy accommodation to be provided for the use of the tenants ;

(*iv*) the tanks, wells and low lands which should be filled up ; and

(*v*) any other improvements they consider necessary in order to remove or abate the insanitary condition of the *bustee*.

(*3*) A report (together with the schedule annexed thereto) made and signed under this section shall be sufficient evidence of the result of such inspection.

(*Chapter X.—Bustees.—Clause 329.*)

privy accommodation, means of lighting, means of water-supply and other works on such land as may be shown in the plan.

(2) The Commissioners may, at any time, cause a written notice to be served upon such owner requiring him so to maintain such streets, passages, drains, common bathing arrangements, common privy accommodation, means of lighting, means of water-supply and other works:

Provided that any convenience made by the owner of a hut for his own use shall, subject to such notice as aforesaid, be maintained by him, and not by he owner of the *bustee*.

Power to owner to take land out of the category of *bustee* in certain cases.

329. (*1*) The owner of any land included in a *bustee* and forming a separate holding may, at any time, whether or not a standard plan has been prepared for the *bustee*, notify the Commissioners in writing that he intends to remove all the huts standing on such land. [*Cf.* C. M. Act, s. 359.]

(*2*) The receipt of any such notice shall not debar the Commissioners from approving a standard plan of such *bustee*.

(*3*) From the date of such notice no application shall be entertained for erecting on such land any hut or adding to any hut standing thereon.

(*4*) Such owner shall, within six months after the date of such notice, or within such further time as the Commissioners at a meeting may from time to time allow, remove all huts standing on such land; and if he does not do so, the notice shall be deemed to be cancelled.

(*5*) When all such huts have been so removed, such land shall according to its situation either—

(*i*) be altogether excluded from the limits of the *bustee*, or

(*ii*) be shown, in a standard plan approved for the *bustee* under this chapter, as not being a part of such *bustee*:

Provided that if, in the standard plan, any street or passage is shown on such land, the provisions of sections 326 and 328 shall, with all necessary modifications, be deemed to apply to such street or passage, unless the Commissioners at a meeting otherwise direct.

(*6*) If after all the huts have been removed under sub-section (*4*) any application is received for erecting any hut on such land, the Commissioners may, by written notice, require the owner of the land to carry out such improvements included in the standard plan as they may think fit.

(*7*) When all the huts standing on any land within a *bustee* have been removed under sub-section (*4*), the Commissioners at a meeting may either—

(*a*) cancel the standard plan (if any) already approved, under this chapter, for such *bustee*, or

(*b*) modify such plan, after hearing the objections (if any) of any owner of land included in such *bustee*.

CHAPTER XI.

PURITY OF WATER-SUPPLY.

Power to set apart wells, tanks, etc., for drinking, culinary, bathing and washing purposes.

333. The Commissioners may, by order published at such places as they think fit, set apart any tank, well, spring or water-course or any part thereof, vested in or under their control, or with the consent of the owner thereof any tank, well, spring, or water-course or part thereof subject to any rights which the owner may retain with the consent of the Commissioners for any of the following purposes, namely,— [Cf. Ben Act III of 1884, s. 199.]

(*a*) for the supply of water for drinking or for culinary purposes or for both, or

(*b*) for the purpose of bathing, or

(*c*) for washing animals or clothes, or

(*d*) for any other purpose connected with the health, cleanliness or comfort of the inhabitants,

and may by like order prohibit bathing or the washing of animals or clothes or other things at any public place not set apart for that purpose, or at any time or by a sex other than that specified in the order and may in like manner prohibit any other act by which water in public places may be rendered foul or unfit for use or which causes or is likely to cause inconvenience or annoyance to persons lawfully using such places.

Power to req cleansing of sources of water for drinking culinary purposes.

334. The Commissioners may, by notice, require the owner of, or the person having control over, a private tank, well, spring, or water-course or other place, the water of which is used for drinking or culinary purposes, to clean the same from time to time of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as to the Commissioners may seem fit, and in the case of a well to repair the same. [Cf. U P Act III of 1916, s 225 (1); B. & O. Act VII of 1922, s 229.]

Power to prohibit use of polluted water for drinking or culinary purposes.

335. If the Commissioners at a meeting after due inquiry are satisfied that the water of any tank, well, spring or water-course, or part thereof, or other place, used or likely to be used for drinking or culinary purposes, is, if so used, liable to engender or cause the spread of disease, and that owing to its situation or other cause such place cannot effectively be protected from pollution, or if the owner of, or person having control over, any such place refuses or neglects to comply with a requisition of the Commissioners under section 334, the Commissioners may— [Cf. B & O Act VII of 1922, s. 230.]

(*a*) by public notice prohibit the use or removal of water from such place for drinking or culinary purposes during a period to be specified in the notice, and take such steps as they may consider necessary to prevent the use or removal of water for such purposes, or [Cf. Ben. Act III of 1884, ss. 199A, 217.]

(*b*) in the case of a private well, require the owner of, or person having control over it to close it permanently or to fill it up with suitable material.

CHAPTER XII.

INSANITARY AND DANGEROUS PROPERTY.

Power to direct the filling up etc., of unwholesome wells, pools, etc.

341. (*1*) When—

(*a*) any well, pool, ditch, tank, pond, pit or marshy or undrained ground, or

(*b*) any cistern, reservoir or water-butt or any other receptacle or place where water is stored or accumulates, or

(*c*) any waste or stagnant water, whether within any private enclosure or not,

[*Cf.* C. M. Act, Sch. XVIII, r. 7; Ben. Act III of 1884, ss 199 and 200.]

appears to the Commissioners to be or to be likely to become injurious to health or offensive to the neighbourhood, they may, by written notice, require the owner or occupier of the land or building to which such well, cistern, reservoir, water-butt or receptacle pertains, or of the land, as the case may be, in which such pool, ditch, tank, pond, pit, ground, place or water is situated, at the expense of such owner or occupier—

(*i*) to cleanse the same, or

(*ii*) to re-excavate the same, or

(*iii*) to fill up the same with suitable material, or

(*iv*) to drain off or to remove water from the same,

or to take such other order therewith as the Commissioners may deem necessary within such period as may be specified in the notice.

(*2*) If the Commissioners, in exercise of the powers conferred under this Act, execute any work referred to in a notice issued under sub-section (*1*), and if the person liable to pay the expenses of such work fails to pay the same, the Commissioners may, until such expenses are paid,—

(*i*) take over and let out on lease any part of the land used in connection with the said well, pool, ditch, tank, pond, pit, cistern, reservoir, water-butt, receptacle, place or water, or any part of the said ground, as the case may be, or

(*ii*) retain possession of the same, or the site thereof, and utilize it for public purposes.

(*3*) If the said expenses be paid by an occupier of land, he may in the absence of any agreement to the contrary deduct the same from any rent due to the owner of the land.

Power to Commissioners to regulate excavations.

342. (*1*) No person shall, within a municipality without the special permission of the Commissioners, make an excavation for the purpose of taking earth therefrom, or for the making of bricks or for the purpose of storing rubbish or offensive matter therein or dig any cess-pools, tanks, ponds, wells or pits:

[*Cf.* C. M. Act, s. 448 and Sch. XVIII, r. 9; Ben. Act III of 1884, ss. 282, 270.]

Provided that the Commissioners at a meeting may make such general exemptions from the provisions of this section as may appear to them to be necessary for the public convenience.

(*2*) If any such excavation, cess-pool, tank, pond, well or pit is made or dug without the permission required under sub-section (*1*), the Commissioners may, whether the offender be prosecuted or not, by written notice require the owner or occupier of the

(*Chapter XII.—Insanitary and Dangerous property.—Clause 350.*)

(*b*) that a block or group of buildings is, for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid,—

they may by notice require the owners or occupiers of such building or buildings or portions thereof, or, at the option of the Commissioners, the owners of the land occupied by such building or buildings or portions thereof, to execute such works or to take such measures as they may deem necessary for the prevention of such risk.

(*2*) No person shall be entitled to compensation for damages sustained by reason of any action taken under or in pursuance of this section, save when the building is demolished to the extent of more than half of its cubical contents in pursuance of an order made thereunder, in which case the Commissioners shall pay reasonable compensation to the owners thereof.

(*3*) When any building is entirely demolished under this section and the demolition thereof adds to the value of other buildings in the immediate vicinity, the owners of such other buildings shall be bound to contribute towards the compensation payable to the owner of the first named building in proportion to the increased value accruing to their own premises.

The amount of such contribution and the proportions in which it is to be divided among the owners of such other buildings shall be determined by the Commissioners at a meeting and shall be recoverable as though it were a rate under the provisions of Chapter V.

(*4*) When any building though not entirely demolished under this section is demolished to the extent of more than half of its cubical contents, allowance shall be made in determining the compensation for the benefit accruing to the premises from the improvement thereof.

Procedure in case of buildings deemed unfit for human habitation.

350. (*1*) If, for any reason, any building or portion of a building intended for, or used as, a dwelling place appears to the Commissioners at a meeting to be unfit for human habitation, they may require the owner or occupier of such building to make such alterations as they think necessary in the building in order to make it fit for human habitation, if they consider that this can be done, but whether they think that it can be made fit for human habitation or not, they may, in either case, after giving the owner or occupier an opportunity of being heard, apply to a Magistrate to prohibit the further use of such building or portion thereof for such purpose ;

[*Cf.* C. M. Act, s. 381; Ben. Act III of 1884, ss. 242, 244X.]

and the Magistrate shall serve a notice on such owner or occupier so as to give him an opportunity of being heard in the Court, and after such inquiry as he thinks fit to make, may, by written order, prohibit the further use thereof, or may pass such other order as he may deem just and proper.

CHAPTER XIII.

OFFENSIVE AND DANGEROUS TRADES, OCCUPATIONS OR PROCESSES.

Power to prohibit certain offensive and dangerous trades without license.

354. (*1*) No person shall use or permit to be used any place within such local limits as may be fixed by the Commissioners at a meeting without a license from the Commissioners (which shall be renewable annually) for any of the following purposes, namely:— [Cf. Ben. Act III of 1884, s. 261.]

(*i*) for the slaughter of animals for purposes other than the sale of their flesh for human consumption; or

(*ii*) for the skinning or disembowelling of animals; or

(*iii*) for storing hides, fish, horns or skins; [Cf. U. P. Act II of 1916, s. 298 (G) (a) (ii)]

(*iv*) for boiling or storing offal, blood, bones or rags; or

(*v*) for melting tallow; or

(*vi*) for tanning or for the manufacture of leather or leather goods; or [Cf. U. P. Act II of 1916, s. 298 (G) (iv).]

(*vii*) for oil-boiling; or

(*viii*) for soap-making; or

(*ix*) for dyeing; or

(*x*) for burning or baking bricks, tiles, pottery or lime, whether for trade or private purposes: or [Cf. Ben. Act III of 1884, s. 262A.]

(*xi*) as a depôt for trade in coal; or

(*xii*) for storing kerosine, petroleum, naphtha, or any inflammable oil or spirit; or

(*xiii*) for trading in, or storing for other than his own domestic use, hay, straw, wood, thatching grass, jute or other dangerously inflammable material; or

(*xiv*) for any manufacture, process or business from which offensive or unwholesome smells or offensive noises may arise; or

(*xv*) for any trade, process or business which the Local Government may, by notification, declare to be a trade, process or business which requires to be regulated under the provisions of this chapter.

(*2*) A license for any of the purposes mentioned in sub-section (*1*) shall not be withheld unless the Commissioners at a meeting have reason to believe that the business which it is intended to establish or maintain would be the cause of annoyance, offence or danger to persons residing in or frequenting the immediate neighbourhood or that the area should be for general reasons kept clear of the establishment of such business.

(*3*) The Commissioners at a meeting may, in accordance with a scale of fees to be prepared by them from time to time and approved by the Local Government, levy a fee in respect of any such license and the renewal thereof, and may impose such conditions as to supervision, inspection, conservancy and other matters upon the grant of any such license as they may think necessary.

CHAPTER XIV.

RESTRAINT OF INFECTION.

Duty of Commissioners in case of epidemic.

360. If the Commissioners have good reason to believe that any dangerous disease has appeared or is likely to appear in epidemic form within the municipality, they shall promptly investigate the matter, secure the prompt and thorough isolation of those sick or infected with such disease, so long as there is danger of their communicating the disease to other persons; see that no person suffers for lack of nurses or other necessaries because of isolation for the public good; give public notice of infected places by placard on the premises and otherwise, if necessary, promptly notify head teachers of schools concerning families any of the members of which are suffering from dangerous diseases; supervise funerals of persons dead from such diseases, disinfect rooms, clothing and premises, and all articles likely to be infected; and generally so exercise the powers conferred on them by this Act as to guard and protect the public health and do such things as may be necessary to check and prevent the spread of the disease. [*Cf.* S. African P. H. Act, 1919.]

Information to be given of dangerous disease.

361. Whoever,— [*Cf.* Punjab Act III of 1911, s. 141.]

(*a*) being a medical practitioner or a person openly and constantly practising the medical profession, and in the course of such practice becoming cognizant of the existence of any dangerous disease in any building other than a public hospital; or, in default of such medical practitioner or person practising the medical profession,

(*b*) being the owner or occupier of such building and being cognizant of the existence of any such disease therein; or, in default of such owner or occupier,

(*c*) being the person in charge of, or in attendance on, any person suffering from any such disease in such building, and being cognizant of the existence of the disease therein,

fails to give information to such officer as the Commissioners may direct, or gives false information respecting the existence of such disease, shall be punishable with fine as provided in this Act:

Provided that a person not required to give information in the first instance, but only in default of some other person, shall not be punishable if it be shown that he had reasonable cause to suppose that the information had been, or would be, duly given.

Power to Commissioners to remove patient to hospital in certain cases.

362. (*1*) When, in the opinion of any registered medical practitioner any person is suffering in any municipality from any dangerous disease and is also without proper lodging or accommodation or is lodged in such a manner that he cannot be effectually isolated so as to prevent infection or contagion, and the said practitioner considers that such person should be removed to a hospital or place at which [*Cf.* C. M. Act, s. 436.]

(Chapter XIV.—Restraint of infection.—Clauses 366—370.)

Provision of places and appliances for disinfection.

366. (*1*) The Commissioners at a meeting may provide proper places, with all necessary attendants and apparatus, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection or contagion ; [*Cf.* Punjab Act III of 1911, s. 115.]

(*2*) The Commissioners may—

(*a*) cause conveyances, clothing or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by them ; and

(*b*) direct any clothing, bedding or other articles likely to retain infection to be disinfected or destroyed, and shall give compensation for any article destroyed under this clause.

Provision of places for disinfection or washing of infected articles.

367. The Commissioners at a meeting may from time to time, by public notice, appoint a place or places at which conveyances, clothing, bedding or other articles, which have been exposed to infection or contagion from any dangerous disease, may be washed, and no person shall wash or cause to be washed any such article at any place not so appointed, unless the same has been disinfected to the satisfaction of the Health Officer or Sanitary Inspector or of a registered medical practitioner. [*Cf.* C. M. Act, s. 442 (2).]

Acts done by persons suffering from certain diseases.

368. No person suffering from any dangerous disease notified in this behalf shall— [*Cf.* Punjab Act III of 1919, s. 145]

(*a*) make or offer for sale any article of food for human consumption or any medicine or drug ; or

(*b*) wilfully touch any such article, medicine or drug, when exposed for sale by others ; or

(*c*) take any part in the business of washing or carrying soiled clothes.

Infected articles not to be transmitted without previous disinfection.

369. (*1*) No person shall, without previous disinfection of the same, give, lend, sell, transmit or otherwise dispose of any article which he knows or has reason to know has been exposed to infection from any dangerous disease. [*Cf.* C. M. Act, s. 443.]

(*2*) Nothing in sub-section (*1*) shall apply to a person who transmits, with proper precautions, any such article for the purpose of having the same disinfected.

Exposure of person suffering from dangerous disease and restrictions on carriage of patient or dead-body in public conveyance.

370. (*1*) No person shall— [*Cf.* P. H. Act, Scotland, s. 56 ; C. M Act, s. 441.]

(*a*) while suffering from any dangerous disease wilfully expose himself in any street, public place, shop, bazar or any place used in common by persons other than members of the family or household to which such infected person belongs, or cause or suffer himself or any clothing, bedding or other article which has been exposed to infection or contagion to be carried in a public conveyance without previously notifying to the owner, driver or person in charge of such conveyance that he is so suffering, or that such article is so infected, and without proper precautions against spreading the said disease, or

(*Chapter XIV.—Restraint of infection.—Clause 377.*)

(*g*) the duties in respect of the prevention and notification of any dangerous disease, and in respect of persons suffering or suspected to be suffering therefrom, of the owners and occupiers of tea-gardens, factories, mills, and workshops and of other persons employing in any one place not less than fifty persons;

(*h*) the duties of parents or guardians whose children being school children are suffering or have recently suffered from any dangerous disease or have been exposed to infection or contagion and the duties of persons in charge of schools in respect of such children;

(*i*) the prevention of the spread from any animal, or the carcasses or product of any animal, to man, of rabies, glanders, anthrax, plague, tuberculosis, trichinosis or any other disease communicable to man by any animal or the carcass or product of any animal;

(*j*) the prevention of the spread and the eradication of malaria, the destruction of mosquitoes and the removal or abatement of conditions permitting or favouring the multiplication or prevalence of mosquitoes;

(*k*) the prevention of the spread of disease by flies or other insects and the destruction of such insects, and the removal or abatement of conditions permitting or favouring, the prevalence or multiplication of such insects;

(*l*) the destruction of rodents and other vermin and the removal or abatement of conditions permitting or favouring the harbourage or multiplication thereof;

(*m*) the prevention of the spread of any dangerous disease by the carrying on of any business, trade or occupation;

(*n*) the regulation of rag-flock manufacture and the trade in rags and in bones and in second-hand clothing, bedding or any similar article and the requiring any such article to be disinfected before its importation, removal, sale or exposure for sale, or use in any manufacturing process; and

(*o*) the disposal of any refuse, waste matter or other matter or thing, which has been contaminated with or exposed to infection or contagion.

Vaccination.

Health Officer to exercise powers of Superintendent of Vaccination.

377. A Health Officer appointed under section 62 or section 63 shall, within the municipality to which he is appointed, subject to such restrictions as the Local Government may impose, exercise the powers and perform the duties of a Superintendent of Vaccination.

[*Cf.* B. and O. Act VII of 1922, s 268.]

(*Schedule XIV.—Rules as to private connections to premises and meters.—Rules 8-10.*)

notice, require the owner or occupier of the premises—

(*a*) to replace such fittings, or

(*b*) to make such alterations therein as may be specified in the notice:

Provided that where any ferrule is obstructed owing to silt or other matter being deposited therein, the Corporation shall themselves cleanse such ferrule and replace it in proper order.

(*2*) If any notice issued under sub-rule (*1*) is not complied with within forty-eight hours, the Corporation may forthwith carry out the work, and the cost thereof shall be payable by the person to whom the notice was issued.

Inspection of works, etc., by qualified officer before permitting connection with mains.

8. (*1*) Before a connection for the supply of water from the municipal mains to any premises is sanctioned by the Corporation, they shall cause all the works, pipes, taps and fittings within such premises to be inspected by a duly qualified officer.

(*2*) Until the Corporation have certified that the said works, pipes, taps and fittings have been executed and put up in a satisfactory manner, no connection with the municipal mains shall be made.

Meters.

Testing of meter.

9. (*1*) If the owner or occupier of any premises to the service-pipe of which a meter is attached desires to have the meter tested, he may send a written application to the Corporation, and such application shall be accompanied by a fee of five rupees.

(*2*) Upon receipt of any such application and fee, the Corporation shall forthwith cause such meter to be tested, at a time and place to be specified in a notice to be served upon such owner or occupier.

(*3*) If such meter is found, upon being so tested, to register more than two *per cent.* in excess of the correct quantity, the said fee shall be returned to the person who sent it.

Payment by occupier in case of incorrectness of meter.

10. If a meter which has been tested under rule 9 does not register more than two *per cent.* in excess of the correct quantity, the amount payable under section 238 shall be calculated according to the quantity indicated by the meter; but if the meter registers more than two *per cent.* in excess of the correct quantity, the quantity indicated shall, for the purpose of calculating the amount payable under section 238, be reduced by double the percentage of the excess registered:—

Provided that—

(*a*) if such excess is more than ten *per cent.*, no charge shall be made under section 238; and

(*b*) no reduction shall be allowed, in calculating the charge for excess under section 238, on account of the incorrectness of the meter, except on the amount payable for the

(*Schedule XIV.—Rules as to private connections to premises and meters.—Rules 11-13.*)

quarter in which the application referred to in rule 9, sub-rule (*1*), is received.

Replacing of meter.

11. When any meter attached to the service-pipe of any premises is out of order or under repair, the Corporation shall forthwith replace it by another meter.

Prohibition of fraud in respect of meter

12. No person shall fraudulently—

(*a*) alter the index to any meter, or prevent any meter from duly registering the quantity of water supplied, or

(*b*) abstract or use water before it has been registered by a meter set up for the purpose of measuring the same.

Prohibition of injuring meter or fittings

13. No person shall wilfully or negligently injure or suffer to be injured any meter belonging to the Corporation, or any of the fittings of any such meter.

SCHEDULE XV.

RULES AS TO DRAINS, PRIVIES AND URINALS.

[*See sections 266, 273, 274, 277, 278, 282, 284, 285, 286, 287, 364 (6) and (7) and 488.*]

Drains.

Plans of house-drains to be submitted to Corporation.

1. (*1*) Every person who intends to construct a house-drain, or to make any substantial additions to, or alterations in, a house-drain, shall send to the Corporation an application in such form (to be supplied free of charge) as may be prescribed by the Corporation, and shall state therein the name and address of the licensed plumber who will execute the work and the purposes for which the drain is to be used.

(*2*) Such application shall be accompanied by a plan, in triplicate unless the Corporation otherwise direct, drawn to a scale of eight feet to the inch (or such smaller scale as the Corporation may consider sufficient), and showing—

(*a*) the premises to be drained and the boundaries thereof,

(*b*) the position of all existing filtered water pipes within the premises,

(*c*) the alignment, gradient and size of the proposed house-drain and its appurtenances,

(*d*) any existing drains and their appurtenances, and

(*e*) any other particulars which may be prescribed by the Corporation.

Material and joints.

2. Every underground house-drain constructed after the commencement of this Act shall consist of good sound pipes made of glazed stoneware or other suitable material, and shall have water-tight joints made of Portland cement or any other cement approved by the Executive Officer.

Size.

3. Every such house-drain shall be of adequate size, with an internal diameter of not less than—

(*a*) six inches between the master-trap and the sewer, and

(*b*) four inches at all other places.

Angles.

4. No such house-drain shall be so constructed as to form in any of such drains a right-angled junction, either vertical or horizontal, and every branch drain or tributary drain shall be joined to another drain obliquely, at an angle of not less than one hundred and thirty-five degrees, in the direction of the flow of such other drain.

How to be laid

5. Every such house-drain shall be—

(*a*) laid upon a bed of good concrete of such width as may be approved by the Executive Officer, and not less than six inches thick,

(Schedule XV.—Rules as to drains, privies and urinals.—Rules 6-8.)

(*b*) covered for half its depth with concrete not less than four inches thick, and

(*c*) so constructed as to have a proper fall.

Prohibition of inlet within building.

6. Every such house-drain shall be so constructed as to prevent any inlet to the drain (other than such inlet as may be required from the apparatus of a connected-privy or urinal or a slop-sink constructed or adapted to be used for receiving sewage) being made within the premises.

Traps.

7. (*1*) In every such house-drain a suitable trap shall be provided.

(*2*) Such trap shall be placed—

(*a*) within the premises, or,

(*b*) with the approval of the Corporation and on payment of such fees as may be prescribed by the Corporation, in the footpath or (if there is no footpath) in the roadway adjacent to the premises, and

(*c*) at a point as distant as may be practicable from the premises and as near as may be practicable to the point at which the drain is connected with a municipal sewer.

(*3*) Every inlet to any such house-drain (other than an inlet provided in pursuance of rule 8 as an opening for the ventilation of the drain) shall be properly trapped.

Ventilation.

8. The ventilation of every such house-drain shall be provided for as follows:—

(*1*) at least two untrapped openings shall be made—

(*a*) one opening shall be made at or near the level of the surface of the ground adjoining the opening, shall be as near as may be practicable to the trap prescribed by rule 7, sub-rule (*1*), shall be on that side of such trap which is nearer to the premises, and shall communicate with the drain by means of a suitable pipe, shaft or disconnecting chamber;

(*b*) the second opening shall be made by carrying up, from a point in the drain as far distant as may be practicable from the point at which the opening mentioned in sub-clause (*a*) is situated, a pipe or shaft fixed vertically to such height and in such manner as effectually to prevent any escape of foul air from such pipe or shaft into any premises in the vicinity thereof, and in no case to a less height than ten feet;

(*2*) in any case in which the Executive Officer considers it impracticable to enforce the provisions of sub-clause (*a*) and sub-clause (*b*), the two openings prescribed by clause (*1*) shall be made as follows:—

(*i*) one opening shall be made by carrying up from a point as near as may be practicable to the trap prescribed by rule 7, sub-rule (*1*), a pipe or shaft fixed vertically to such height and in such manner as effectually to prevent any escape of foul air from

(Schedule XV.—Rules as to drains, privies and urinals.—Rule 9.)

such pipe or shaft into any premises in the vicinity thereof, and in no case to a less height than ten feet; and such opening shall be situated on that side of the said trap which is nearer to the premises;

(*ii*) the second opening shall be made at a point in the drain as far distant as may be practicable from the point at which the said pipe or shaft is carried up, shall be at or near the level of the surface of the ground adjoining the opening, and shall communicate with the drain by means of a suitable pipe or shaft;

(*3*) every opening provided under this rule shall be furnished with a suitable grating or other suitable cover for the purpose of preventing any obstruction in, or injury to, any pipe or drain by the introduction of any substance through the opening;

(*4*) such grating or cover shall be so constructed and fitted as to secure the free passage of air through it by means of a sufficient number of apertures, the aggregate extent of which shall be not less than the sectional area of the pipe or drain to which the grating or cover is fitted;

(*5*) every pipe or shaft referred to in this rule shall be of a sectional area not less than that of the drain with which the pipe or shaft communicates, and not less than the sectional area of a pipe or shaft of the diameter of four inches;

(*6*) except with the written permission of the Corporation, no bend or angle shall be formed in any pipe or shaft referred to in this rule;

(*7*) where the situation, height, sectional area and mode of construction of the soil-pipe of any connected-privy or connected-urinal, or the waste-pipe from any slop-sink situated within any premises, are such as are prescribed by this rule for a pipe or shaft for ventilating a drain, such soil-pipe shall, with the consent of the Executive Officer, be deemed to provide the opening which, under this rule, is required to be provided by means of a pipe or shaft.

Soil-pipe of connected-privy or urinal.

9. The soil-pipe of every connected-privy or connected-urinal constructed after the commencement of this Act or provided for a new building shall—

(*a*) be at least four inches in diameter,

(*b*) be fixed outside the privy or urinal, or outside the building in which the privy or urinal is situated, and be continued upwards without any diminution of its diameter,

(*c*) be of such height and be so placed as to afford, by means of the open end of the pipe, a safe outlet for sewer air,

(*d*) whenever practicable, be so constructed as to avoid any bend or angle, and

(*e*) be so constructed as to have no trap between the pipe and the drains with which the privy or urinal communicates, and no trap (other than such trap as necessarily forms part of the apparatus of the privy or urinal) in any part of the pipe.

(Schedule XV.—Rules as to drains, privies and urinals.—Rules 10-12.)

Ventilation of soil-pipe of connected privy or urinal detached from building.

10. Where any such connected-privy or connected-urinal has no internal communication with any building other than the privy or urinal, then,—

(*a*) if the distance between the privy or urinal and the trap provided under rule 7, sub-rule (*1*), in the drain with which the privy or urinal communicates is not more than ten feet, no ventilation-pipe need be fixed in the soil-pipe;

(*b*) if the said distance is more than ten feet but not more than thirty feet, a ventilation-pipe shall be fixed in the soil-pipe at a point as far distant as may be practicable from the trap provided under rule 7, sub-rule (*1*); and such pipe shall be placed vertically to such height and in such manner as effectually to prevent any escape of foul air from the pipe into any building in the vicinity thereof, and in no case to a less height than ten feet, and shall be of a sectional area not less than that of the drain with which it communicates, and not less than the sectional area of a pipe of the diameter of four inches;

(*c*) if the said distance is more than thirty feet the soil-pipe shall be ventilated in the manner prescribed by rule 8.

Waste-pipes.

11. (*1*) The following pipes in any new building, namely:—

(*a*) the waste-pipe from any bath-sink (not being a slop-sink constructed or adapted to be used for receiving sewage) or lavatory,

(*b*) the overflow-pipe from any cistern or from any safe under a bath or connected-privy or connected-urinal, and

(*c*) every other pipe for carrying off waste water,

shall be taken through an external wall of the building, may, if the Executive Officer so directs, be provided with a suitable trap, and shall be so constructed as to discharge into the open air over a channel leading to a trapped gully-grating at least eighteen inches distant from that end of the pipe from which the water issues.

(*2*) The waste-pipe in any such building from any slop-sink constructed or adapted to be used for receiving sewage shall be constructed so as to comply with such of the rules in this schedule as relate to the soil-pipe of a connected-privy or connected-urinal.

Open house-drains.

12. (*1*) Every open house-drain constructed after the commencement of this Act, or provided for a new building, for the purpose of discharging surface or sullage water, shall be constructed of brick masonry or concrete covered with a plaster containing not less than twenty-five *per cent.* of Portland cement or any other cement approved by the Executive Officer or of natural or artificial stone, or of glazed half-round pipes.

(*Schedule XV.—Rules as to drains, privies and urinals.—Rules 13-17.*)

(*2*) Every such open house-drain shall be connected with a municipal sewer through trapped inlets in the manner prescribed under this Act or under any rule or by-law made thereunder for other house-drains.

Type-plans

13. Type-plans for the construction of house-drains shall be prepared by the Corporation and kept open to the inspection of any applicant at the municipal office at all reasonable times without charge.

Maintenance of house-drains kept up for the benefit of certain premises only.

14. (*1*) Every house-drain which is situated in, alongside or under any street, and which has been or shall be constructed, whether at the charge of the municipal fund or not, for the sole use and benefit of, or which is continued for the sole use and benefit of, any premises adjoining or near to such street,

shall be maintained and from time to time repaired, flushed, cleansed and emptied by the owner or occupier of such premises as the Corporation may direct.

(*2*) The Corporation may, by written notice, require such owner or occupier, as the case may be—

(*a*) to repair, flush, cleanse or empty such house-drain, or

(*b*) to take such other order with such house-drain as the Corporation may deem necessary.

Maintenance of house-drains jointly used by two or more premises.

15. (*1*) Every house-drain whether constructed at the charge of the municipal fund or not which is jointly used for the drainage of two or more premises, shall be maintained and from time to time repaired, flushed, cleansed and emptied by the owners or occupiers of such premises as the Corporation may direct.

(*2*) The Corporation may, by written notice, require the said owners or occupiers, as the case may be, to carry out any work referred to in sub-rule (*1*), and the cost thereof, whether incurred by the said owners or occupiers or by the Corporation under section 510, sub-section (*2*), shall be paid by the said owners or occupiers in such proportion as the Corporation may think fit.

Power to Executive Officer to supervise and require alteration of work of laying underground drain.

16. (*1*) When any underground drain, which is not a municipal drain, is being laid, the Executive Officer may cause the work to be supervised and may from time to time, by written notice to the person carrying out the work, require the making of any reasonable alteration or addition therein or thereto, or the abandonment of any part thereof, if such alteration, addition or abandonment appears to him to be necessary for ensuring the complete and satisfactory execution of the work.

(*2*) If any requisition under sub-rule (*1*) is not complied with, the Corporation may stop the work and dismantle anything which has been done in contravention of such requisition, and the expenses of so doing shall be paid by the person to whom the requisition was addressed.

Restriction on construction of drain beneath building.

17. Except with the written permission of the Corporation and in conformity with such conditions as may be prescribed by the Corporation, either

(*Schedule XV.—Rules as to drains, privies and urinals.—Rules 18, 19.*)

generally or specially, in this behalf, no drain shall be so constructed as to pass beneath any part of a building.

Drains passing beneath a building.

18. The following provisions shall be observed when any drain is, with the permission of the Corporation granted under rule 17, constructed so as to pass beneath a building, namely :—

(*1*) the drain-pipe shall be of iron or such other material as the Executive Officer may approve ;

(*2*) the drain shall be so laid as to leave, between the top of the drain at its highest point and the surface of the ground beneath the building, a distance of not less than the full diameter of the drain ;

(*3*) the drain shall be laid in a direct line throughout the whole distance beneath the building ;

(*4*) the drain shall be completely embedded in, and covered with, good and solid concrete at least six inches thick all round ;

(*5*) adequate means for ventilating the drain shall be provided (where necessary) at each end of such portion thereof as lies beneath the building.

Privies and urinals.

Plans of privies and urinals to be submitted to Corporation.

19. (*1*) Every person who intends to construct any privy or urinal or to make any substantial additions to, or alterations in, any privy or urinal, shall send to the Corporation an application in such form (to be supplied to the applicant free of charge) as may be prescribed by the Corporation.

(*2*) Such application shall be accompanied by—

(*a*) a site-plan, in triplicate unless the Corporation otherwise direct, drawn to a scale of not less than twenty feet to the inch and showing all surroundings to a distance of fifty feet from the privy or urinal, and

(*b*) a detailed plan in triplicate of the privy or urinal with sections and cross-sections, drawn to a scale of four feet to the inch and showing—

(*i*) the means of ventilation,

(*ii*) (for connected-privies and connected-urinals only) the position and capacity of the reserve tank and flushing cistern,

(*iii*) (for connected-privies and connected-urinals only) the size and position of the anti-syphonage pipe, soil-pipe, ventilation-pipe, water-pipe, syphon-trap, and other appurtenances,

(*iv*) the ground-level and the floor-level,

(*v*) all pipes and other appurtenances in connection with the filtered water-supply, and

(*Schedule XV.—Rules as to drains, privies and urinals.—Rules 20-23.*)

(*vi*) any other particulars which may be prescribed by the Corporation :

Provided that where any privy or urinal forms part of any building for which an application has been made under rule 52 of Schedule XVII, the particulars required under this rule may be attached to such application.

Power to Corporation to refuse to sanction service-privy or service-urinal which will be a nuisance.

20. The Corporation may, for reasons to be recorded by them in writing and furnished to the applicant free of charge, refuse to grant permission to erect any service-privy or service-urinal which will, in their opinion, be a nuisance.

Regulation of site of service-privies and service-urinals.

21. (*1*) No service-privy or service-urinal exceeding eleven feet in height shall be placed in the space required by this Act to be left at the back of a building.

(*2*) No service-privy or service-urinal situated in, or adjacent to, a building shall be placed at a distance of less than six feet from—

(*i*) any public building, or

(*ii*) any building which is, or is likely to be, used as a dwelling-place, or a kitchen, or as a place in which any person is, or is intended to be, employed in any manufacture, trade or business.

(*3*) No service-privy or service-urinal shall be constructed in any premises occupied by a masonry building, or, without the special sanction of the Corporation, in any other premises which are situated in a street which has been sewered and has an adequate unfiltered water-supply.

(*4*) Every service-privy and service-urinal shall be detached from the inhabited portion of any building.

Power to Corporation to require substitution of connected-privies for service-privies and connected-urinals for service-urinals.

22. (*1*) No service-privy or service-urinal shall be placed on any upper floor of a building :

Provided that, if in any case the Corporation considers it impracticable or inexpedient to provide a connected-privy or a connected-urinal, they may, by written notice, authorize the owner of the building to erect a service-privy or a service-urinal, as the case may be.

(*2*) The Corporation may, by written notice, require the owner of any building to convert any service-privy into a connected-privy and any service-urinal into a connected-urinal.

Power to Corporation to require owner to provide access to service-privy or service-urinal from street.

23. (*1*) If there is no convenient access from a street to any service-privy or service-urinal, and if the Corporation consider it inexpedient to require that the privy or urinal be converted into a connected-privy or connected-urinal, as the case may be, they may, if they think fit, by written notice, require the owner of the privy or urinal to form a passage giving access thereto from a street.

(*2*) Every notice served under sub-rule (*1*) shall require that such passage be formed at ground-level, be not less than four feet wide, and be provided with a suitable door, and shall inform the said owner that the passage may, at his option, be either open to the sky or covered in.

(Schedule XV.—Rules as to drains, privies and urinals.—Rules 24-27.)

Models and type-plans.

24. Models and type-plans of privies and urinals approved by the Corporation, with estimates of the cost of constructing privies and urinals in accordance therewith, shall be kept in the municipal office, and shall be open to inspection by any person at all reasonable times without charge; but no person shall be bound to construct any privy or urinal in accordance with any such model or type-plan if such privy or urinal be constructed in accordance with the other rules contained in this schedule.

Drains.

25. (*1*) A drain shall be provided for every service-privy and every service-urinal.

(*2*) Such drain shall be constructed of some impervious material and shall connect the floor of the privy or urinal—

(*a*) with a drain communicating with a municipal sewer, or

(*b*) if permitted by the Corporation, with an impervious cesspool the contents of which can be removed to a municipal sewer either by hand or by flow after filtration.

Floor.

26. (*1*) The floor of every privy and every urinal shall,—

(*a*) if the Executive Officer in any case so directs, be made of one of the following materials, to be selected by the owner of the privy or urinal, that is to say, glazed tiles, artificial stone or cement, or

(*b*) if no such direction is given, be made of thoroughly well-burnt earthen tiles or bricks plastered (and not merely pointed) with cement, and

(*c*) be in every part at a height of not less than six inches above the level of the surface of the ground adjoining the privy or urinal.

(*2*) The floor of every service-privy and every service-urinal shall have a fall or inclination of at least half an inch to the foot towards the drain prescribed by rule 25.

(*3*) The floor of every connected-privy and connected-urinal in which the opening of the pan is placed on the level of the floor shall have a fall or inclination towards the pan of at least half an inch to the foot.

Walls and roof.

27. The walls and the roof (if any) of every privy and every urinal shall be made of such materials as may be approved by the Corporation:

Provided that—

(*a*) in the case of service-privies and service-urinals, the entire surface of the walls below the platform shall either be rendered in cement or be made as prescribed in clause (*a*) or clause (*b*) of sub-rule (*1*) of rule 26;

(*b*) in the case of connected-privies and connected-urinals the walls shall, up to a height of at least twelve inches above the platform, be made as prescribed in clause (*a*) or clause (*b*) of sub-rule (*1*) of rule 26.

(Schedule XV.—Rules as to drains, privies and urinals.—Rules 28-32.)

Platform.

28. The platform of every privy and every urinal shall either be plastered with cement or be made of some water-tight non-absorbent material.

Ventilation of privies and urinals in, or adjacent to, buildings.

29. Every privy and every urinal situated in, or adjacent to, a building shall have an opening, of not less than three square feet in area, in one of the walls of the privy or urinal, as near the top of the wall as may be practicable and communicating directly with the open air.

Service-privies and urinals to be provided with a movable receptacle for sewage.

30. (*1*) Every service-privy and service-urinal shall be provided with a movable receptacle for sewage.

(*2*) The following provisions shall have effect with regard to such privies, urinals and receptacles, namely :—

(*a*) the space beneath the platform of the privy or urinal shall be of such dimensions as to admit of a movable receptacle for sewage, of a capacity not exceeding two cubic feet, being placed and fitted beneath the platform in such manner and position as will effectually prevent the deposit, otherwise than in such receptacle, of any sewage falling or thrown through the aperture in the platform ;

(*b*) the privy or urinal shall be so constructed as to afford adequate access to the said space for the purposes of cleansing it and of placing therein, and removing therefrom, a proper receptacle for sewage ;

(*c*) the said receptacle shall be water-tight, and shall be made of metal, well-tarred earthenware or glazed stoneware, and shall be of such construction and shape as the Executive Officer may consider suitable ;

(*d*) the door of the opening for the insertion and removal of the said receptacle shall be so made as completely to cover the said opening.

Connected-privies and urinals to be separated from kitchens, etc.

31. Every connected-privy and connected-urinal shall be sufficiently separated, to the satisfaction of the Executive Officer, from all kitchens, habitable rooms and rooms in which any person is, or is intended to be, employed in any manufacture, trade or business.

Flushing of connected privies and of urinals.

32. (*1*) Every connected-privy shall be provided with a suitable water-cistern, so arranged as—

(*a*) to discharge direct into the pan of the privy not less than three gallons of water each time the cistern is used, and

(*b*) to prevent water being drawn from the cistern for any other purpose.

(*2*) All waste-pipes and overflow-pipes attached to such cisterns shall terminate in the open air and be cut off from all direct communication with any drain.

(*Schedule XV.—Rules as to drains, privies and urinals.—Rules 33-37.*)

(*3*) Every urinal shall be provided with adequate flushing arrangements to the satisfaction of the Chief Engineer.

(*4*) For the purpose of supplying water to the flushing cistern of a connected-privy or connected-urinal a reserve tank of such capacity as may be prescribed by the Corporation shall be provided at a height sufficient to supply the cistern with water, and in case the reserve tank is situated at such a height that it cannot be supplied direct from the street main, the owner of the premises shall provide a suitable pump and shall make all necessary arrangements to ensure a satisfactory supply of water to the reserve tank :

Provided that where the height of the building containing such privy or urinal does not exceed the number of feet for which the pressure of unfiltered water is required by or under this Act for that street, the provisions of this sub-rule shall not be put into operation.

Pan for connected-privies and urinals.

33. Every connected-privy and connected-urinal shall be provided with a pan of such form and dimensions as may be approved by the Chief Engineer.

Water-trap.

34. Every connected-privy and connected-urinal shall be provided with an air-tight water-trap immediately below the pan.

Syphon-trap and anti-syphonage pipe.

35. (*1*) Every connected-privy and connected-urinal shall be provided with a syphon-trap which shall be proof against syphonage.

(*2*) In all cases where a connected-privy or connected-urinal is more than one storey high, an anti-syphonage pipe having an internal diameter of not less than two inches shall be provided, and such pipe shall be carried independently to a height of at least two feet above the roof of the privy or urinal or the roof of the building in which such privy or urinal is situated.

Prohibition of "containers" and "D traps."

36. No "container" or other similar fitting shall be placed under the pan of a connected-privy or connected-urinal; and no trap of the kind known as a "D trap" shall be used with any such privy or urinal.

Soil-pipe for connected-privies and connected-urinals.

37. (*1*) Every connected-privy and connected-urinal shall be provided with a soil-pipe for carrying sewage to a municipal sewer.

(*2*) Such soil-pipe shall be provided with air-tight joints, and, if it be placed above ground, shall be made of metal approved by the Executive Officer.

(*3*) Such soil-pipe shall, in addition to the trap prescribed by rule 34, be provided with a trap placed at some point between the privy or urinal and the sewer referred to in sub-rule (*1*).

(*Schedule XV.—Rules as to drains, privies and urinals.—Rule 38.*)

(4) Such soil-pipe shall be ventilated by direct communication with the open air in the manner prescribed by the rules contained in this schedule; and, if the privy or urinal is situated in a building, the pipe shall be carried outside the building.

Enforcement of the foregoing rules in the case of future privies or urinals.

38. If any new building which is a privy or urinal is so constructed as to contravene any of the provisions of this schedule, the Corporation may (whether or not the offender be prosecuted under this Act), by written notice, require—

(*a*) the occupier of the building to which the privy or urinal belongs, or

(*b*) (if the privy or urinal does not belong to a building) the owner of the land on which the privy or urinal stands,

to make such alterations as may be specified in the notice with the object of bringing the privy or urinal into conformity with the said provisions.

SCHEDULE XVI.

RULES AS TO THE REGULATION, MAINTENANCE, PROTECTION AND REPAIR OF STREETS AND PUBLIC PLACES.

(*See sections 298, 364 (8) and (9) and 488.*)

Regulation, maintenance and protection of streets and public places.

Cutting of hedges and trees and power to Corporation to cause same to be cut.

1. (*1*) The Corporation shall cause any hedges belonging to them which border on any street or square to be trimmed or pruned to a height not exceeding seven feet, and shall cause any trees belonging to them which overhang any public street, so as to obstruct the same or cause damage thereto, to be cut and trimmed.

(*2*) The Corporation may, by written notice, require the owner or occupier of any land or building to trim or prune, to a height not exceeding seven feet, any hedges thereof bordering on any public street, or to cut and trim any tree appertaining to such land or building which overhangs any public street so as to obstruct the same or cause damage thereto.

(*3*) The Corporation, if for the public safety it appears to them necessary to do so, may cause any hedge or tree referred to in sub-rule (*2*) to be trimmed, pruned or cut without previously giving notice to the owner or occupier of the land or building as required by that sub-rule, and the Corporation may nevertheless require the expenses thereof to be paid by the said owner or occupier.

Regulation of verandahs, etc., projecting over streets.

2. (*1*) No verandah supported by pillars resting on a street shall be erected, either as a new structure or otherwise,—

(*a*) in any street specified by the Corporation in that behalf, or

(*b*) in any street the width of which is less than fifty feet and the footpath of which is not less than eight feet in width.

(*2*) No roof shall be placed on any verandah supported as aforesaid, and no roof exceeding three feet in width shall be placed on any verandah projecting over a street and not so supported.

(*3*) No person shall put up any verandah, balcony, sunshade, weather-frame or the like, to project over any street, without the written permission of the Corporation.

(*4*) Subject to the provisions of sub-rule (*1*) and sub-rule (*2*), the Corporation may, in their discretion, give written permission, on such conditions as they may think fit and on payment of such fees or rent as may be fixed from time to time by the Corporation, to owners or occupiers of buildings abutting on any street to put up verandahs, balconies, sunshades, weather-frames and the like, whether supported by pillars or not, to project from any building over such street.

(*Schedule XVI.—Rules as to the regulation, maintenance, protection and repair of streets and public places.—Rules 3-5.*)

(*5*) On the breach of any such condition, the Corporation may, by written notice, require the owner or occupier of the said building to comply with such condition.

(*6*) At any time after permission has been given under sub-rule (*4*) to put up a verandah, balcony, sunshade, weather-frame or the like, to project from a building, the Corporation may, by written notice, require the owner or occupier of the building to remove such projection; and the owner or occupier shall be entitled to reasonable compensation out of the municipal fund on account of such removal:

Provided that no fee shall be charged for any verandah, balcony, weather-frame or the like when the same is situated in or over any street not vested in the Corporation.

Sky-signs.

3. (*1*) No person shall erect or maintain a sky-sign without the written permission of the Corporation, which shall not be granted unless the sign is so constructed and maintained as not to be dangerous to the public or likely to fall into any street or public place.

(*2*) Every written permission granted under sub-rule (*1*) shall continue in force for not more than one year from the date on which it was granted, and may be revoked at any time by the Corporation if they consider that the sky-sign for which it was granted has become dangerous to the public or is likely to fall into a street or public place.

Execution of works in public streets.

Guarding and lighting when public street opened or broken up and speedy completion of work.

4. (*1*) When any drain in, or the pavement or surface of, any public street is opened or broken up for the purpose of carrying on any work, or when any public street is under construction, the Corporation shall cause the place to be fenced and guarded and to be sufficiently lighted during the night and shall take proper precautions for guarding against accident, by shoring up and protecting adjoining buildings;

and shall, with all convenient speed, complete the said work, fill in the ground, and repair the said drain, pavement or surface, and carry away the rubbish occasioned thereby.

(*2*) No person shall, without lawful authority, remove any fence or shoring-timber, or remove or extinguish any light, set up under sub-rule (*1*).

Power to Corporation to prevent or restrict traffic in street during progress of work.

5. (*1*) When any work referred to in rule 4 is being executed in any public street, or when any other work which may lawfully be done is being executed in any street, the Corporation may direct that such street shall, during the progress of such work, be either wholly or partially closed to traffic generally or to traffic of any specified description.

(*2*) When any such direction has been given, the Corporation shall set up in a conspicuous position in or near the street an order prohibiting traffic to the extent so directed, and shall fix such bars, chains or

(*Schedule XVI.—Rules as to the regulation, maintenance, protection and repair of streets and public places.—Rules 6-8.*)

posts across or in the street as they may think proper for preventing or restricting traffic therein.

(*3*) No person shall, without lawful authority, infringe any such order or remove any such bar, chain or post.

Naming of public streets and numbering of premises.

Posting of street names.

6. (*1*) The Corporation shall from time to time cause to be put up or painted, in a durable manner, on a conspicuous part of some building, wall or place, at or near each end, corner or entrance of every public street, such name as the Corporation may from time to time determine under section 295, sub-section (*2*), as the name by which such street is to be known.

(*2*) No person shall, without lawful authority, destroy, pull down, or deface any such name, or put up any name different from that put up by order of the Corporation.

Numbering of premises.

7. (*1*) The Corporation shall from time to time cause all premises in or near each public street to be numbered separately, and shall cause their respective numbers to be affixed in conspicuous places outside such premises at or near the entrances thereto.

(*2*) No person shall, without lawful authority, destroy, pull down or deface any such number, and no person shall affix to any such premises a private number of the same design as such number.

Corporation to keep a register of premises.

8. The Corporation shall keep a register of all alterations made by them in the names of streets and in the numbers of the houses therein and such register shall be kept in such a form as to show the date of every such alteration and the name of the street and the number of the premises previous to such alteration, as well as the new name of the street and the new number of the premises. It shall be lawful for any person to inspect such register and to take a copy of any portion thereof upon payment of such reasonable fee as the Corporation may from time to time determine.

SCHEDULE XVII.

RULES AS TO THE USE OF BUILDING-SITES AND THE EXECUTION OF BUILDING-WORK.

[*See sections 319, 330, 331, 363, 364 (10), 488, 494 and 495.*]

Part I.—Building-sites.

Conditions as to use of building-sites.

1. No piece of land shall be used as a site for the erection of a building,—

(*1*) if the building is to abut on a street, unless the site is of such a shape that the face of the building can be made parallel to the line of the street, or as nearly parallel to the said line as the Corporation may consider practicable; and,

(*2*) if the site is within thirty feet of a tank, unless the owner takes, or satisfies the Corporation that he will take, such order as will prevent any risk of the drainage of the building passing into the tank; and,

(*3*) if the site is a filled-up tank, or has been filled up with, or used for depositing, rubbish, offensive matter or sewage, unless the Corporation have caused the site to be examined and granted a certificate to the effect that it is, from sanitary and engineering points of view, fit to be built upon; and,

(*4*) if the building to be erected is a public building, a dwelling-house or a hut intended for human habitation, unless the site is certified by the Corporation to be dry and well-drained, or unless the Corporation are satisfied that it is capable of being well-drained and that the owner will take the necessary steps to drain it.

Certificate as to correctness of plans of a previously existing building and fees therefor.

2. (*1*) Any person who intends to erect any building upon a site on which a building has been previously erected, whether before or after the commencement of this Act, may, before commencing to erect his intended building, cause to be prepared plans showing the extent of the previously existing building in its several parts (or, in the event of such building having been taken down before the commencement of this Act, or having been accidentally destroyed, the best plans available under all the circumstances of the case), and may cause such plans to be submitted to the Corporation who shall (if reasonably satisfied with the evidence of their accuracy) certify the same; and such certificate shall for the purposes of these rules be taken to be conclusive evidence of the correctness of the plans.

(*2*) The Corporation, when granting a certificate under this rule, may charge such fees, not exceeding ten rupees for any one building, as they may think fit.

Part II.—Buildings generally.

Height.

3. (*1*) If a building is situated at the side of a street, no portion of the building, except open or balustraded parapets not more than four feet high, shall intrsect any of a series of imaginary lines

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building work.—Rule 3.*)

drawn across the street at an angle of forty-five degrees with the horizontal, such lines being drawn from the side of the street which is the more remote from the building in question, from a height of two feet above the centre of the street:

Provided as follows—

(*i*) where the said street is joined at an angle by another street facing the building, or where the street in which the building is situated terminates in front of the building, the height of that portion of the building which is opposite the street facing it measured from two feet above the centre of the street, shall in the former case, not exceed the height which would be permissible if the building abutted on or were situated on the side of a street equal in width to the width of the street on which it abuts or on the side of which it is situated *plus* half the width of the street facing it, and in the latter case, the height of the building shall not exceed the height which would be permissible if the building abutted on or were situated on the side of a street one-and-a-half times the width of the street terminating in front of it;

(*ii*) nothing herein contained shall affect the erection of a four-storeyed building abutting upon, or situated at the side of a street of not less than forty-five feet in width, if such building, including the parapet wall and the plinth, does not exceed fifty-six feet in height;

(*iii*) nothing herein contained shall affect the erection of a building abutting upon, or situated at the side of, a street of not less than sixty feet in width, if such building does not exceed eighty feet in height; and

(*iv*) no building exceeding eighty feet in height shall be erected without the special permission of the Corporation, who in granting such permission, may impose such conditions as they may think proper for the safety of the public and the safety and convenience of persons occuping the building.

Explanation.—If a building be placed at the edge of the street, its height, measured from two feet above the centre of the street, and excluding parapets as aforesaid, shall not exceed the average width of the street facing the site; but, if the building or one or more of its storeys be set back, the height of the building may be increased, subject to the condition that no portion of the building, after the height is increased, intersects any of the aforesaid lines.

(2) In the case of a new building erected on any portion of the site of the whole or part of a building

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rule 3.*)

in existence at the commencement of this Act, the angle at which the lines referred to in sub-rule (*1*) are to be drawn shall be fifty-six-and-a-half degrees instead of forty-five degrees:

Provided as follows—

(*i*) the height allowed under this sub-rule shall in no case exceed thirty-six feet, and

(*ii*) except with the special permission of the Corporation, nothing contained in this sub-rule shall authorize the erection of a new building so as to make any portion of it higher than any building which at the commencement of this Act was standing on the same portion of the site.

(*3*) Notwithstanding anything contained in sub-rule (*1*) or sub-rule (*2*), the Corporation may, by order published in the *Calcutta Gazette*, declare that, in any street or portion of a street, not less than twelve feet in width, which is specified in the order, the erection of two-storeyed buildings not exceeding twenty-eight feet in height excluding two feet for the plinth and excluding open or balustraded parapets not more than four feet high, will be permitted without complying with the requirements of those sub-rules.

(*4*) If a building is situated on a corner plot so as to abut upon more than one street, the narrower of such streets shall, for the purpose of regulating the height of the building, be deemed to be of the same width as the wider street to a distance of fifty-five feet from such wider street.

(*5*) Notwithstanding anything contained in sub-rules (*1*), (*2*) or (*4*),—

(*a*) a building of not more than one storey and not exceeding twelve feet in height (excluding two feet for the plinth) above the centre of the street, and

(*b*) if, in any street which is less than twelve feet in width, the owner of any building-site abutting on the street makes a free gift to the Corporation of all land comprised within such site, which falls within six feet of the centre line of such street, then a two-storeyed building not more than twenty-eight feet high,

may be erected without complying with the requirements of the said sub-rules.

(*6*) For the purposes of clause (*b*) of sub-rule (*5*) of this rule and of clause (*b*) of sub-rule (*4*) of rule 30—

(*a*) the Corporation may prescribe a centre line for any street which is less than twelve feet in width, and

(*b*) when such centre line has been prescribed, the side of the street shall, for the purposes of sub-rule (*1*), be deemed to be an imaginary line drawn six feet from such centre line.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 4—8.)

Level of floor.

4. The floor or lowest floor of every new building erected from the ground-level shall be constructed at such level as will admit of—

(*a*) the construction of a drain sufficient for the effectual drainage of the building and placed at such level as will admit of the drainage being led into some municipal sewer at the time existing or projected, and

(*b*) the provision of the requisite communication with some sewer into which the drainage may lawfully be discharged at a point in the upper half of such sewer or with some other means of drainage into which the drainage may lawfully be discharged.

Provision of fire-escapes, staircases and lift in certain buildings.

5. (*1*) All public buildings and all buildings of the warehouse class, and where the Corporation deem it necessary, all buildings of four or more storeys, shall be provided with adequate means of escape in case of fire, to the satisfaction of the Corporation, and shall also be provided with such number of staircases as the Corporation may require.

(*2*) The Corporation may, by written notice require the owner of a new building, more than sixty feet in height or comprising four or more storeys, erected after the commencement of this Act, to provide a lift or some other similar mechanical contrivance for carrying persons from one floor to another.

Certain buildings not to be erected within six feet of a service-privy.

6. No new public building or new building which is, or is likely to be used as a dwelling-place or a kitchen or as a place in which any person is, or is intended to be, employed in any manufacture, trade or business shall be erected within six feet of any service-privy or service-urinal.

Prohibition of use of inflammable materials for roofs or external walls.

7. (*1*) External roofs or walls of buildings shall not, after the commencement of this Act, be made of grass, leaves, mats, canvas or other inflammable materials.

(*2*) The Corporation may, by written notice, require the owner of any building situated within a distance of thirty feet from any other building, and having at the commencement of this Act an external roof or wall made of any such inflammable material, to remove or alter such roof or wall.

(*3*) Sub-rules (*1*) and (*2*) shall not apply to bamboo shingle or wood or to any garden hut, orchid house, fernery or other similar structure within a compound, unless in any particular case the Corporation consider any such structure to be dangerous.

Part III.—Masonry buildings generally.

Foundation.

8. (*1*) Except with the sanction of the Corporation, the foundation of a masonry building shall rest on solid ground.

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 9—14.*)

(*2*) Except with the sanction of the Corporation, the spread of the foundation shall be such that the pressure on the soil, taking into account the load on the floors and terrace-roof (if any) referred to in rules 15 and 17, shall not be greater than one ton on the square foot.

(*3*) The levels of the foundation shall be such as the Corporation may consider satisfactory.

Plinth.

9. The plinth of a masonry building, except in the case of motor garages and coach-houses, shall be at least two feet above the level of the centre of the nearest street:

Provided that the plinth of stables and cow-sheds, may be one foot above such level.

Footings for walls.

10. Every wall of a masonry building shall be constructed so as to rest upon proper footings having regular offsets and on each side of the wall a horizontal spread (equal on each such side) of not less than one-half the height of the footings, provided that when an adjoining wall interferes the footings may, subject to the provisions of rule 8, sub-rule (*2*), be omitted, where that wall adjoins.

Outer walls.

11. The outer walls of a masonry building shall be constructed of brick or some similar hard and incombustible substance.

Bonding of walls.

12. All walls of a masonry building shall be properly bonded.

Damp-proof course.

13. (*1*) Every wall of a masonry building shall have a damp-proof course at the level of the ground floor.

(*2*) Such damp-proof course may consist of sheet-lead, asphalt, slates laid in cement, vitrified bricks or any other durable material impervious to moisture.

Walls in building of more than one storey.

14. If a masonry building exceeds one storey in height,—

(*a*) every wall shall be solidly put together with—

(*i*) good cement, or

(*ii*) good lime, or

(*iii*) mortar compounded with good cement and sand or other suitable material, or

(*iv*) mortar compounded with good lime and sand or other suitable material;

(*b*) the proportions of the materials forming such mortar shall be such as are approved by the Corporation;

(*c*) no part of any wall, other than a cornice or moulding, shall overhang any part of a wall underneath it; and

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 15—21.*)

(*d*) every wall shall be of such thickness as the Corporation may consider necessary to ensure safety, regard being had to the height of the building, the materials of which it is constructed, and the purpose for which it is intended to use it.

Floors.

15. The floors of every masonry building shall be constructed to bear safely the maximum load to be carried, the allowance for live load not being less than fifty-six pounds on the square foot.

Beams and girders.

16. (*1*) All beams and girders in a masonry building shall be supported by a breadth of brick-work, stone or other solid substance sufficient to secure their stability.

(*2*) The bearing of a beam or girder on a wall shall not, without the sanction of the Corporation, be less than three-fourths of the thickness of the wall.

Terrace-roofs.

17. Terrace-roofs shall be constructed to withstand such load, not less than forty pounds on the square foot, in addition to their own weight, as may be specified by an order of the Corporation.

Power to Corporation to regulate height of boundary wall.

18. Notwithstanding anything contained in this schedule, a boundary wall may be erected on the boundary of a site to any height which the Corporation may think fit and proper in the special circumstances of the case.

Notice to be sent to Corporation before commencing work.

19. Not less than three days before any person commences to erect a new building (other than a hut) the owner of the building shall send to the Corporation a written notice specifying the date on which it is proposed to commence the work.

Notice after completion of work.

20. Within one month after the completion of the erection of a new building (other than a hut)—

(*a*) the owner of the building shall send to the Corporation a written notice of the fact of such completion; and

(*b*) the licensed building surveyor or other person (if any), employed under rule 55 to supervise the erection of the said building, shall sign and send to the Corporation a true certificate in the following form:—

"BUILDING COMPLETION CERTIFICATE.

(*See Schedule XVII, r. 20.*)

I do hereby certify that the following building work (*here insert full particulars of the work*) has been supervised by me and has been completed to my satisfaction; that the workmanship and the whole of the materials used are good; and that no provision of the Calcutta Municipal Act, 1923, or of the rules and by-laws made thereunder, and no requisition made, condition prescribed or order issued under the said Act, rules or by-laws has been transgressed in the course of the work."

Inspection of masonry buildings by Corporation.

21. The Corporation may,—

(*a*) at any time during the erection of any new building (other than a hut), or

(*b*) within one month after the receipt of the notice or the certificate sent under rule 20 with respect to any such building, or

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 22—24.)

(c) if no such notice or certificate has been received, at any time after the building has been erected,

inspect such building, without giving previous notice of their intention to do so.

Power to Corporation to take action after making inspection.

22. (*1*) If, on making any inspection under rule 21, the Corporation find that the building inspected is being or has been erected—

(*a*) otherwise than in accordance with the plans thereof which they have approved, or

(*b*) in such a way as to contravene any of the provisions of this Act or any rules or by-laws made thereunder,

they may, by written notice, require the owner of the building either—

(*i*) to make such alterations as may be specified in the notice with the object of bringing the work into conformity with the said plans or provisions, or

(*ii*) to appear before them and show cause why such alterations should not be made.

(*2*) If such owner does not appear and show cause under clause (*ii*) of sub-rule (*1*), he shall be bound to make the alterations specified in such notice.

(*3*) If such owner appears and shows cause under clause (*ii*) of sub-rule (*1*), the Corporation shall, after hearing him, either—

(*a*) cancel the notice issued under sub-rule (*1*), or

(*b*) confirm the same, subject to such modifications (if any) as they may think fit.

IV.—Dwelling-houses and other domestic buildings.

Proportion of site for dwelling-house which may be built upon.

23. The total area covered by all the buildings on any site used for a dwelling-house shall not exceed two-thirds, or, in localities where the erection of only detached buildings is allowed, one-third, of the total area of the site, and the area not so covered shall form part of the site:

Provided that the Corporation may at any time permit an excess area not exceeding five *per cent.* of the total area of the site to be covered in the case of a detached building, where they are satisfied, for special reasons to be recorded in writing, that the convenience or amenity of the building will be substantially increased, if such excess area is permitted to be covered.

Dwelling-houses and out-offices, where two-thirds of site are left vacant.

24. (*1*) If two-thirds of any building-site are left vacant—

(*a*) the dwelling-house may be placed in any part of the site, but not (subject to the provisions of section 303 or section 309, as the case may be) so as to extend beyond any building-line prescribed under section 302 or section 308; and

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 25—27.)

(*b*) servants' houses, stables and other out-offices within the area of the site shall not be of more than two storeys or exceed twenty-four feet in height or twenty feet in depth, and shall not be placed on more than two sides of the dwelling-house or within twenty-four feet of the dwelling-house.

(*2*) If two-thirds of a building-site are left vacant under sub-rule (*1*) no building or part of a building shall be erected so as to encroach upon the area so left vacant:

Provided that the Corporation may at any time permit an excess area not exceeding five *per cent.* of the total area of the site to be covered in the case of a detached building where they are satisfied, for special reasons to be recorded in writing, that the convenience or amenity of the building will be substantially increased, if such excess area is permitted to be covered.

Size and ventilation of inhabited rooms

25. Every room in a domestic building which is intended to be used as an inhabited room—

(*a*) shall be in every part not less than ten feet in height, measured from the floor to the under-side of the beam on which the roof or ceiling rests;

(*b*) shall have a clear superficial area of not less than eighty square feet;

(*c*) shall have, for purposes of ventilation,

(*i*) windows opening directly into the external air, or into an open verandah, and having an opening of not less than one-fifteenth of the floor-area of the room, and

(*ii*) an aggregate opening of not less than one-seventh of the floor-area of the room, to be provided by windows, or windows and doors, opening directly into the external air or into an open verandah; and

(*d*) shall, if such room has a cubical area of three thousand cubic feet or less, be provided, for every six hundred cubic feet capacity or fraction thereof, with one or more ventilating openings aggregating not less than one-and-a-half square feet in area, near the ceiling and opening directly into the external air or into an open verandah:

Provided that the Corporation may, in their discretion, relax the provisions of clause (*a*) and clause (*d*).

Floor of inhabited room over stable, cattle-shed or cow-house.

26. Every room in a domestic building which is intended to be used as an inhabited room, and which is constructed over a stable, cattle-shed or cow-house, shall be separated from the stable, cattle-shed or cow-house by a floor of concrete or other impermeable material.

Lighting and ventilation of staircases.

27. In every domestic building constructed or adapted to be occupied in flats or tenements, the principal common staircase shall be adequately lighted and ventilated upon every storey.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 28-30.)

Ground floor.

28. The ground floor of every domestic building shall be covered throughout, at the height of the plinth, with some impermeable material approved by the Corporation, unless such floor be supported on beams and has a free air-space beneath it.

Court yard of dwelling-house.

29. *(1)* The minimum superficial area of every court-yard of a dwelling-house shall be one-fourth of the aggregate floor-area of the rooms and verandahs on the ground floor abutting on the court-yard :

Provided that, in determining the said aggregate floor-area,—

(*i*) only one-half of the floor-area of such rooms and verandahs as abut on another court-yard or on the open space prescribed under rule 30, or rule 32, and

(*ii*) no portion of the floor-area of such rooms and verandahs as abut on a street not less than twelve feet in width,

shall be taken into account.

(2) Any room which is separated only by an open verandah from the court-yard shall, for the purpose of this rule, be deemed to abut on such court-yard.

(3) The minimum width of every such court-yard shall be eight feet.

(4) No portion of any face of a dwelling-house abutting on such court-yard shall intersect any of a series of imaginary lines drawn across the court-yard from the opposite face of the house, at the level of the plinth, at an angle of sixty-eight degrees with the horizontal :

Provided that nothing contained in this sub-rule shall prevent the construction of four-storeyed buildings on two sides of a court-yard where the length of the court-yard opposite such buildings is not less than twenty feet and the width of such court-yard is not less than fifteen feet.

(5) For the purposes of sub-rule *(4)*, the opposite face of the house shall be deemed to be a vertical plane drawn through the most projecting portion of such face excluding any cornice or moulding not exceeding eighteen inches.

(6) Notwithstanding anything contained in sub-rule *(4)*, a dwelling-house abutting on a court-yard of which the greater dimension does not exceed twice the less dimension, shall be held to comply with this rule if, by reason of its abutting on a court-yard of the same area but square in shape, the building would comply with this rule.

Open space in rear of building, regulating the rear height.

30. *(1)* There shall be, at the back of every domestic building, an open space extending along the entire width of the building and forming part of the site thereof.

(2) The said space shall be of such width that any of a series of imaginary lines drawn across such

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 44—47.*)

Materials to be deemed incombustible

44. The following materials shall, for the purposes of rule 43, be deemed to be incombustible, namely :—

(*a*) brick-work constructed of good bricks, well-burnt, hard and sound, properly bonded and solidly put together with—

(*i*) good mortar compounded of good lime and sharp clean sand, hard clean broken brick, broken flint, grit or slag well pulverized, or

(*ii*) good cement mixed with any of the materials mentioned in sub-clause (*i*),

(*b*) granite and other stone which is suitable for building purposes by reason of its solidity and durability,

(*c*) iron, steel and copper,

(*d*) slate, tiles, bricks and terra-cotta, when used for coverings or corbels,

(*e*) flag-stones when used for floors over arches, if not exposed on the underside and if not supported at the ends only,

(*f*) concrete, composed of broken brick, stone chippings or selected slag and lime, cement or calcined gypsum—when the concrete is used for filling-in between joists of floors to a depth of not less than four inches, and

(*g*) any combination of concrete, steel or iron or any other material approved in this behalf from time to time by the Executive Officer.

Materials to be deemed to be fire-resisting but not incombustible.

45. The following materials shall, for the purposes of rule 43, be deemed to be fire-resisting, but not incombustible, namely :—

(*a*) *sal*, teak and other hard timber, when used for beams or posts or in combination with iron, the timber and the iron (if any) being protected by plastering in cement or other incombustible or non-conducting external coating,

(*b*) in the case of doors, *sal*, teak or other hard timber not less than one-and-a-half inches thick, and

(*c*) in the case of staircases, *sal*, teak or other hard timber, the treads and risers being not less than one inch and-a-half thick.

Walls for staircases.

46. The walls supporting or enclosing any staircase in a public building shall be of masonry and not less than ten inches thick.

Uniformity in treads and risers in staircases.

47. The treads and risers of each flight of stairs in a public building shall be of uniform width.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 48—52.)

Width of staircases, internal corridors and passage-ways.

48. (*1*) No staircase, internal corridor or passage-way in a public building shall be less than six feet wide:

Provided that, where not more than two hundred persons are to be accommodated in any public building, any staircase, internal corridor or passage-way may be of any width not less than four feet six inches.

(*2*) Every staircase, internal corridor or passage-way in a public building, which communicates with any portion of the building intended for the accommodation of more than four hundred persons, shall be wider than six feet by six inches for every hundred persons over four hundred, subject to a maximum width of nine feet.

(*3*) Notwithstanding anything contained in sub-rule (*1*) and sub-rule (*2*), instead of a single staircase, corridor or passage-way of the width prescribed by sub-rule (*2*), there may be two staircases, corridors or passage-ways, each being of a width equal to at least two-thirds of the width so prescribed.

Division of wide staircase by hand-rail.

49. If the width of any staircase in a public building is eight feet or more, the staircase shall be divided by a hand-rail.

Separate means of exit from floors on different levels.

50. If some of the persons accommodated in a public building are placed on a higher floor than others, separate means of exit, of the width prescribed by rule 48, sub-rules (*1*), (*2*) or (*3*), as the case may be, and communicating directly with a public street or an open space, shall be provided for each floor:

Provided that this rule shall not apply to a hotel or lodging-house, or to any public building which is used as a home, refuge or shelter.

Doors and barriers to open outwards.

51. All doors and barriers in a public building shall be made to open outwards, and no locks or bolts for closing the same from outside shall be affixed thereto.

Part VII.—Applications for permission to erect new buildings (other than huts).

Application to Corporation for permission to erect a masonry new building.

52. (*1*) Every person who intends to erect a new building (other than a hut) shall send to the Corporation an application for permission to execute the work, together with a site-plan of the land, a plan of the whole building, separate plans of each floor of the building, complete elevations and sections of the work and a specification of the work.

(*2*) Every document referred to in sub-rule (*1*) shall contain the particulars and be prepared in the manner hereinafter in this part prescribed in this behalf.

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rule 53.*)

Particulars to be furnished in and with, such application

53. (*1*) Every application made under rule 52 shall be written on a printed form (to be supplied by the Corporation free of charge), and shall state the position of the site, the number assigned to it in the assessment-book and its dimensions, the description of the building and its dimensions, and such other particulars as may be prescribed by the Corporation.

(*2*) The site-plan sent with such an application shall be drawn to a scale of not less than one-fiftieth of an inch to the foot, shall be sent in triplicate, and shall show—

(*a*) the boundaries of the site and of any contiguous land belonging to the owner thereof ;

(*b*) the position of the site in relation to neighbouring streets ;

(*c*) the name of the street in which the building is proposed to be situated ;

(*d*) all existing buildings standing on the site ;

(*e*) the position of the building, and of all other buildings (if any) which the applicant intends to erect upon his contiguous land referred to in clause (*a*), in relation to—

(*i*) the boundaries of the site, and in a case where the site has been partitioned, the boundaries of the portion owned by the applicant and also of the portions owned by the other owners,

(*ii*) all adjacent streets, buildings and premises within a distance of forty feet of the site and of the contiguous land (if any) referred to in clause (*a*), and

(*iii*) (if there is no street within a distance of forty feet of the site) the nearest existing street or some street projected under section 308 or sanctioned under section 314 ;

(*f*) the means of access from the street to the building, and to all other buildings (if any) which the applicant intends to erect upon his contiguous land referred to in clause (*a*) ;

(*g*) the position and the number of storeys of all other buildings within forty feet of the site ;

(*h*) the position, form and dimensions of kitchens, staircases, privies, urinals, drains, cesspools, stables, cattle-sheds, cow-houses, wells and other appurtenances of the building ;

(*i*) free passage or way in front of the building ;

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rule 53.*)

(*j*) space to be left about the building to secure a free circulation of air, admission of light and access for scavenging purposes;

(*k*) the width of the street (if any) in front, and of the street (if any) at the side or rear, of the building; and

(*l*) such other particulars as may be prescribed by the Corporation.

Explanation to clause (d).—If it is intended to demolish or alter any existing building on the site, such building shall be particularly specified, and it shall be expressly stated in the aforesaid application that the applicant undertakes to demolish or alter the same, as the case may be.

(*3*) The plans of the building and the elevations and sections accompanying such an application shall be properly coloured and neatly and accurately drawn to a scale of not less than one-eighth of an inch to the foot and shall be sent in triplicate; and the said plans shall show—

(*a*) the levels and width of the foundation of the building;

(*b*) the level of the lowest floor of the building; and

(*c*) the level of all court-yards and open spaces, and the plinth-level of the building, with reference to the level at the centre of the nearest street.

(*4*) The specification accompanying such an application shall comprise full information as to the following particulars, namely—

(*i*) the materials and method of construction to be used for external walls, party walls, foundations, roofs, floors, fire-places and chimneys;

(*ii*) the manner in which roof and house drainage and the surface drainage of land will be disposed of;

(*iii*) the manner (if any) in which it is proposed to pave the court-yards and open spaces, and the slope to which the surface is to be made in each case;

(*iv*) the means of access that will be available to scavengers to get to service-privies;

(*v*) the purpose for which it is intended to use the building;

(*vi*) if the building is intended to be used as a dwelling-house for two or more families, or as a place for carrying on any trade or business in which more than twenty people may be employed, or as a place of public resort,—the means of ingress and egress to and from such building; and

(*vii*) such other particulars as may be prescribed by the Corporation.

Explanation to clause (v).—If it is intended to use the building or any part thereof for any of the purposes specified in Schedule XIX, or as a stable, cattle-shed or cow-house, the fact shall be expressly stated.

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 54—56.*)

Signature of plans, elevations and sections.

54. The plans, elevations and sections referred to in rule 52 shall be signed clearly and in a prominent place by the owner of the building and by the licensed building surveyor who has prepared the same as required by section 323.

Necessary employment of licensed building surveyor or other competent person to supervise building.

55. (*1*) Every person who intends to erect a new building (other than a hut) which is likely, in the opinion of the Corporation, to cost not less than fifty thousand rupees, or such other amount as may be fixed from time to time by the Corporation, shall employ a licensed building surveyor, or any other competent person who is approved by the Corporation, to supervise the erection of such building.

(*2*) The name of the person to be so employed shall be stated in the application made, under rule 52, in respect of such building.

(*3*) If the person to be so employed is not a licensed building surveyor, the Corporation may, within seven days of the receipt of the said application, refuse to approve his employment, and may return the application for amendment;

and such application shall thereupon be deemed not to have been made until it has been re-submitted duly amended.

(*4*) If the person so employed dies or ceases to be so employed before the completion of the said building, the further erection of the same may be continued for a period of a fortnight, but shall then be suspended until—

(*a*) a licensed building surveyor whose name shall forthwith be reported to the Corporation, or

(*b*) any other competent person approved by the Corporation,

has been employed to supervise such erection.

Formulation of requirements and objections.

56. (*1*) All information and documents which it may be found necessary to require, and all objections which it may be found necessary to make before deciding whether permission to erect a new building (other than a hut) should be given, shall be respectively required and made in one requisition, and the applicant shall be apprised thereof at the earliest possible date.

(*2*) Within fifteen working days after the receipt of any application under rule 52 for permission to execute any work, the Corporation may require the applicant—

(*i*) to furnish them with any information on matters referred to in that rule which has not already been given in the documents received thereunder, or with any document prescribed by that rule which has not been sent in; or

(*ii*) to satisfy them in regard to any objections which may have been taken under these rules to the grant of permission to execute the work.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 57—59.)

(*3*) If any information or documents furnished under sub-rule (*2*) are, in the opinion of the Corporation, incomplete or defective, they may, within fifteen working days after the receipt of the same, require further information or documents to be furnished.

(*4*) If any requisition made under sub-rule (*2*) or sub-rule (*3*) is not complied with within three months, the application received under rule 52 shall be refused.

Permission to execute work when to be given or refused by the Corporation.

57. (*1*) Within fifteen days after the receipt of any application made under rule 52 for permission to execute any work, or of any information or documents or further information or documents required under this schedule, or within fifteen days after the Corporation have been satisfied that there are no objections which may lawfully be taken to the grant of permission to execute the work,

the Corporation shall, by written order, either—

(*a*) grant permission conditionally or unconditionally to execute the work, or

(*b*) refuse, on one or more of the grounds mentioned in rule 59 or rule 63, as the case may be, to grant such permission.

(*2*) When the Corporation grant permission conditionally under clause (*a*) of sub-rule (*1*), they may in regard thereto impose such conditions, consistent with this Act, as they may think fit.

(*3*) Notwithstanding anything contained in sub-rules (*1*) and (*2*), in any case in which it appears to the Corporation that any public improvements which may render necessary the acquisition of the site of a proposed building or any part thereof are desirable and expedient, they may withhold sanction to the building plans submitted in respect of such building for a period not exceeding three months from the date of such submission.

Remedy if Corporation delay grant or refusal of permission.

58. If within the period prescribed by rule 57, the Corporation have neither granted nor refused to grant permission to execute any work, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or of any rules or by-laws made thereunder.

Grounds on which permission to erect a masonry new building may be refused.

59. The only grounds on which permission to erect a new building (other than a hut) may be refused are the following namely :—

(*1*) that the work, or any of the particulars comprised in the site-plan, building-plans, elevations, sections or specification would contravene some specific provision of this Act or some specific order, rule or by-law made thereunder;

(*2*) that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in this schedule;

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 60—64.)

(*3*) that, in the case of a new building (other than a hut) falling within the street alignment or building-line of a public street projected under section 63 of the Calcutta Improvement Act, 1911, the permission of the Chairman of the Board of Trustees for the Improvement of Calcutta has not been obtained; Ben. Act V of 1911.

(*4*) that any of the documents referred to in rule 52 have not been signed as prescribed in rule 54;

(*5*) that any information or documents required by the Corporation under this schedule have not been duly furnished; or

(*6*) that the applicant has not satisfied the Corporation in regard to any objections which may have been taken under these rules to the grant of the said permission.

Signature of approved plans.

60. When the Corporation have given permission to execute any work, the approved plans of the work shall be signed by such officer and in such manner as they may direct.

Retention of plan and submission of fresh application, after refusal to permit execution of work.

61. When permission to erect a new building (other than a hut) is refused,—

(*a*) the Corporation shall retain one copy of the plans submitted, and shall without charge furnish the applicant with their reasons for such refusal, in writing, and

(*b*) the applicant may at any time thereafter send to the Corporation a fresh application and fresh or modified documents under rule 52 framed with the object of meeting the objections for which such permission was refused.

Work not to be commenced unless and until permission given.

62. Subject to the provisions of rule 58, the erection of a new building (other than a hut) shall not be commenced unless and until the Corporation have granted written permission for the execution of the work on an application sent to them under rule 52.

Special powers to Corporation to suspend or grant permission to erect a masonry building or convert huts, etc., into a masonry building.

63. Notwithstanding anything contained in rule 59—

(*a*) if any street shown in the site-plan is an intended private street, the Corporation may, in their discretion, refuse to grant permission to erect a masonry building or to convert one or more huts or temporary structures into a masonry building until the street is commenced or completed, and

(*b*) the Corporation may for special reasons grant permission to erect a masonry building, or to convert one or more huts or temporary structures into a masonry building, on any site without reference to its position in relation to any street.

Lapse of permission, if not acted upon within three years, or, if granted before a certain date, except in certain circumstances.

64. (*1*) If the erection of any new building (other than a hut) is not commenced, and a substantial portion of it is not completed, within three years after the date on which permission was given to execute

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 65—67.*)

the work, the work shall not be commenced or continued until a fresh application has been made and a fresh permission granted under this schedule.

(*2*) At any time before the expiry of three years from the date on which such permission was given, the person to whom it was granted may apply to the Corporation for a certificate that the building has been commenced and a substantial portion of it already completed; and the Corporation shall thereupon cause the said building to be inspected, and if they consider that a substantial portion of it has been completed, they shall grant a certificate to that effect.

(*3*) If any masonry building, permission to erect which was granted before the commencement of this Act, is not wholly completed within three years from the commencement of this Act, the said permission shall be deemed to have lapsed, and any work done thereunder, after the said three years, shall be deemed to have been done without permission:

Provided that the Corporation may, for special reasons, extend the said period of three years.

Power to Corporation to cancel permission on the ground of material misrepresentation by applicant.

65. If, at any time after permission to erect any masonry building has been given, the Corporation are satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application made under rule 52, or in the plans, elevations, sections or specifications submitted therewith in respect of such building, they may cancel such permission, and any work done thereunder shall be deemed to have been done without permission.

Part VIII.—Huts.

Continuous lines.

66. (*1*) Huts in a *bustee* shall be built in continuous lines, in accordance with an alignment to be prescribed by the Corporation and demarcated on the ground, after hearing the objections (if any) of the owner of the *bustee* and the owners of the huts affected by the alignment.

(*2*) If the Corporation are of opinion that huts in a *bustee* are likely to be erected hereafter on any vacant land they may, after hearing the objections (if any) of the owner of the land and the owners of the huts affected by the alignment,—

(*a*) prescribe alignments for huts on such land, and

(*b*) from time to time alter such alignments.

Distance between eaves and alignment.

67. When an alignment has been prescribed under rule 66, no hut shall be erected so that the distance measured from its eave to such alignment is less than six feet.

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 68—76.*)

Use of spaces referred to in rule 67.

68. All spaces referred to in rule 67, between a hut and an alignment, shall remain private property, subject to a right in the Corporation to use them for the purposes of scavenging or for any of the other purposes of this Act:

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, no such use shall, by reason of any lapse of time, be held to confer any right on any person so as prejudicially to affect the rights of the owner of the *bustee*. IX of 1908

Erection of huts in a *bustee* in court-yard formation.

69. Notwithstanding anything contained in rule 66 or rule 67, huts in a *bustee* may, with the special sanction of the Corporation, be erected so as to form an open court-yard comprising at least one-fourth of the whole area occupied by the huts and court-yard:

Provided that no hut erected under this rule shall contain more than one-storey.

Area of court-yard in huts not in a *bustee*.

70. Where huts other than huts in a *bustee* are erected so as to form an open court-yard, the area of the court-yard shall not be less than one-fourth of the area occupied by the huts and court-yard.

Space between huts.

71. There shall be between any two huts a space of at least three feet, measured from eave to eave.

Distance of huts from metalled and sewered street.

72. Except with the sanction of the Corporation, no hut shall be placed at a greater distance than one hundred feet from the nearest part of a metalled and sewered street, unless there be a municipal or *bustee* drain at a distance of not more than twenty feet from the site of such hut.

Distance between hut and masonry building.

73. Except with the sanction of the Corporation, no portion of a hut shall be placed within six feet of a masonry building:

Provided that this rule shall not preclude the erection of huts in the compound of a masonry building in any case where masonry out-offices would be permissible.

Distance between hut and cow-house, etc.

74. No hut used for human habitation shall be placed within six feet of a cow-house, cattle-shed or stable.

Prohibition of projections or dropping of water over street or passage.

75. Every hut abutting on a street or passage, whether public or private, shall be constructed so as not to project over, or admit of water from the roof falling upon, or injuring, such street or passage.

Height.

76. No hut shall comprise more than two-storeys or shall exceed twenty feet in height, measured from the floor level to the junction of the walls with the roof.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 77—81.)

Plinth.

77. The floor-level of a hut shall be raised at least two feet above the level of the centre of the nearest street or passage, and the floor shall be paved with brick-on-edge, cement, concrete or some similar material approved by the Corporation:

Provided that the floor of a stable or cow-shed may be one foot above such level.

Rooms.

78. (*1*) The whole of at least one side of every room in a hut shall either be an external wall or abut on an open court-yard or on an open verandah.

(*2*) Every room in a hut, which is intended to be used as an inhabited room, shall—

(*a*) be provided with a doorway of not less than fifteen square feet in area;

(*b*) be provided with a window or windows opening directly into the external air or into an open verandah, and having an opening of not less than one-fifteenth of the floor area of the room;

(*c*) have a superficial area of not less than eighty square feet; and

(*d*) have a height of not less than eight feet measured from the floor-level to the junction of the walls with the roof.

Court-yards.

79. (*1*) The court-yard (if any) of a hut shall be so raised that the upper surface shall be one foot above the level of the nearest street or passage, and shall be drained into the nearest drain.

(*2*) The width of such court-yard shall be not less than eight feet.

(*3*) Every such court-yard shall be paved with some impermeable material.

Part IX.—Applications for permission to erect new buildings which are huts.

Application to be sent, and particulars furnished, to Corporation by person intending to erect a hut.

80. (*1*) Every person who intends to erect a new building which is a hut on any land shall send to the Corporation—

(*a*) an application for permission to execute the work,

(*b*) a site-plan of the land,

(*c*) plans and sections of the hut, and

(*d*) a specification of the work.

(*2*) Every such application shall contain the particulars and be prepared in the manner prescribed in that behalf in this schedule,

and every such plan, section and specification shall be signed by the licensed building surveyor who has prepared the same as required by section 323.

Application for permission to erect a hut.

81. (*1*) Every application for permission to erect a new building which is a hut shall be written on a printed form to be supplied by the Corporation free of charge.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 82, 83.)

(*2*) If it is intended to use the hut, or any part thereof, for any of the purposes specified in Schedule XIX, or as a stable, cattle-shed, or cow-house, the fact shall be expressly stated in the said application.

(*3*) The plans sent with such an application shall be drawn to a scale of not less than one-eighth of an inch to the foot, shall include a site-plan drawn to a scale of fifty feet to the inch, shall be properly coloured, shall be sent in triplicate, and shall show—

(*i*) the hut,

(*ii*) the privy provided or to be provided for the use of occupants of the hut,

(*iii*) the position and size of the doors and windows,

(*iv*) all existing buildings standing on the site,

(*v*) the means of access to the hut from the street or passage on which it abuts,

(*vi*) the position of the hut in relation to all huts, streets, passages, privies and tanks within a distance of fifty feet from the site, and

(*vii*) such other particulars as may be prescribed by the Corporation.

Explanation to clause (iv).—If it is intended to demolish or alter any existing building on the site, such building shall be particularly specified and it shall be expressly stated in the aforesaid application referred to in sub-rule (*1*) that the applicant undertakes to demolish or alter the same, as the case may be.

Power to Corporation to require further information or a proper site-plan.

82. (*1*) The Corporation may, on receipt of an application under rule 80, require the applicant—

(*a*) to furnish them with any information on matters referred to in rule 80 which has not already been given in the documents received thereunder, or with a proper site-plan as prescribed by that rule, or

(*b*) to satisfy them in regard to any objections which may have been taken under these rules to the grant of permission to execute the work.

(*2*) If any information or plan required under sub-rule (*1*) is, in the opinion of the Corporation, incomplete or defective, they may require further information or a fresh plan to be furnished.

(*3*) If any requisition made under sub-rule (*1*) or sub-rule (*2*) is not complied with within two months, the application received under rule 80 shall be refused.

Power to Corporation to employ licensed building surveyor to prepare site-plan, etc., for hut.

83. The Corporation may—

(*a*) on the application of any person who intends to erect a new building which is a hut, and

(*b*) on payment, by such person, of such fees as the Corporation may prescribe in that behalf,

employ a licensed building surveyor to prepare, in respect of such hut, the plans, sections and specifications prescribed by rule 80.

(*Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 84—87.*)

Permission to execute work when to be given or refused.

84. Within fourteen days after the receipt of any application made under rule 80 for permission to erect a new building which is a hut, or of any information or plan or further information or fresh plan required under this schedule, or within fourteen days after the Corporation have been satisfied that there are no objections which may lawfully be taken to the execution of the work, the Corporation shall, by written order, either grant such permission or refuse to grant the same on one or more of the grounds mentioned in rule 86.

Remedy if Corporation delay grant or refusal of permission.

85. If, within the period prescribed by rule 84, the Corporation have neither granted nor refused to grant permission to erect a new building which is a hut, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or by-laws made thereunder.

Grounds on which permission to erect a hut may be refused.

86. The only grounds on which permission to erect a new building which is a hut may be refused are the following, namely :—

(*1*) that the work would contravene some specific provision of this Act or some specific order, rule or by-law made thereunder;

(*2*) that the application for such permission does not contain the particulars, or is not prepared in the manner, prescribed in this schedule;

(*3*) that, in the case of a new building which is a hut falling within the street alignment or building-line of a public street projected under section 63 of the Calcutta Improvement Act, 1911, the permission of the Chairman of the Board of Trustees for the Improvement of Calcutta has not been obtained; Ben. Act V of 1911.

(*4*) that any plan, section or specification has not been signed as prescribed by rule 80, sub-rule (*2*);

(*5*) that any information or plan required by the Corporation under this schedule has not been duly furnished; or

(*6*) that the applicant has not satisfied the Corporation in regard to any objections which may have been taken under these rules to the grant of the said permission.

Retention of plans, and submission of fresh application, after refusal of permission to erect a hut.

87. When permission to erect a new building which is a hut is refused,—

(*a*) the Corporation shall retain one copy of each of the plans, and shall without charge furnish the applicant with their reasons for such refusal in writing, and

(*b*) the applicant may at any time send to the Corporation a fresh application and a fresh or modified plan under rule 80 framed with the object of meeting the objections for which such permission was refused.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rules 88—92.)

Work not to be commenced unless and until permission given.

88. (*1*) Subject to the provisions of rule 85, the erection of a new building which is a hut shall not be commenced unless and until the Corporation have granted written permission for the execution of the work on an application sent to them under rule 80.

(*2*) If any hut, permission to erect which was granted before the commencement of this Act, is not wholly completed within three years from the commencement of this Act, the said permission shall be deemed to have lapsed and any work done thereunder, after the said three years, shall be deemed to have been done without permission.

Lapse of permission, if not acted upon within six months.

89. If the erection of any new building which is a hut is not commenced within six months after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this schedule.

Part X.—Application of rules in this schedule to alterations of, and additions to, buildings.

Relaxation of rule 3.

90. In applying rule 3 in the case of an alteration of, or addition to, any building, the angle at which the lines referred to in sub-rule (*1*) of that rule are to be drawn shall be fifty-six-and-a-half degrees instead of forty-five degrees:

Provided that nothing contained in this rule shall authorize any addition to a building which would make it higher than any building which, at the commencement of this Act, was standing on the same portion of the site unless it is otherwise permissible under this schedule.

Applicability of rule 30 to alterations and additions above the ground floor.

91. Rule 30 shall apply to alterations of, or additions to, any domestic building, public building or building of the warehouse class [not situated in a locality in which the erection of buildings of the warehouse class is allowed by declaration under clause (*d*) of sub-section (*1*) of section 324] above the ground-floor, even though the open space required under the said rule has not been left on the ground-floor.

Restriction on application of rules 52 to 65, or 80 to 89.

92. (*1*) Rules 52 to 65, or rules 80 to 89, as the case may be, shall not be applied in the case of any alteration of, or addition to, a building unless one or more of the following works is or are undertaken, namely:—

(*a*) the construction or re-construction of a roof or an external or party wall,

(*b*) any repairs to the building which involve the re-construction of—

(*i*) a masonry wall,

(*ii*) the floor of a room (excluding the ground-floor),

(*iii*) a lift-shaft, or

(*iv*) a chimney,

after the same has been entirely or in great part demolished,

(*c*) the closing of any door or window in an external wall,

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rule 93.)

(*d*) the construction of an internal wall or partition,

(*e*) any other alteration of the internal arrangements of a building which affects an alteration of its court-yard or court-yards or its drainage, ventilation or sanitary arrangements, or which affects its security,

(*f*) the addition of any building, room, out-house or other structure,

(*g*) the roofing of any space between one or more walls and buildings,

(*h*) the conversion into more than one place for human habitation of a building originally constructed as one such place,

(*i*) the conversion of two or more places of human habitation into a greater number of such places, or

(*j*) the alteration of a building for the purpose of effecting a partition amongst joint owners.

(*2*) In the case referred to in clause (*g*) of sub-rule (*1*), the said rules 52 to 65, or rules 80 to 89, as the case may be, shall apply only as regards the structure which is formed by roofing a space, and not as regards adjoining buildings.

Grant of provisional permission to proceed with work in cases of urgency.

93. (*1*) If, in any case of urgency arising from causes beyond his own control, any person desires to undertake without delay any of the works referred to in rule 92, he may send to the Corporation an application for provisional permission to proceed with the work.

(*2*) Such application shall contain an explanation of the urgency and a general description of the work proposed to be undertaken.

(*3*) Within a period of three days after the receipt of any such application, the Corporation shall, by written order, either grant or refuse to grant provisional permission to proceed with the work.

(*4*) If, within the said period of three days, the Corporation have neither granted nor refused to grant such provisional permission, the same shall be deemed to have been granted and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or of any rule or by-law made thereunder.

(*5*) Whenever such provisional permission is granted, and in any case provided for by sub-rule (*4*), the applicant shall, within fifteen days, send to the Corporation a regular application for permission to execute the work; and if he fails to do so, the provisional permission shall be deemed to be withdrawn.

(Schedule XVII.—Rules as to the use of building-sites and the execution of building-work.—Rule 94.)

Power of Corporation to relax certain rules as provided under section 331.

94. (*1*) Notwithstanding anything contained in this schedule, but subject to the provisions of section 331, the Corporation may at any time, in dealing with any application to erect a new building as defined in sub-clauses (*b*), (*c*) or (*d*) of clause (*46*) of section 3 or to add to, alter, or do any other work referred to in section 330 to, any building erected before the first day of April, 1900, relax, for special reasons to be recorded in writing, the following rules in this schedule in the manner and circumstances specified hereunder, namely :—

(*a*) Rules 30 and 32 may be relaxed so as to prevent the demolition of any material part of any masonry building existing on the space required to be kept open under the said rules :

Provided that—

(*i*) the new building conforms to the other rules of this schedule ; and

(*ii*) in no case shall the height or extent of the buildings on the said space be increased or added to, unless this is otherwise permissible under the said rules.

(*b*) Rule 29 may be relaxed provided that the building conforms with the provisions of either rule 23 or rule 30.

(*2*) Notwithstanding anything contained in this schedule, but subject to the provisions of section 331, the Corporation may at any time, in dealing with an application to add to, alter, or do any work referred to in section 330 to, any building erected before the 1st day of April, 1900, relax, for special reasons to be recorded in writing, rule 23, provided that some substantial increase is nevertheless made in the area of the open space belonging to the premises and already forming a part of the site.

SCHEDULE XVIII.

RULES FOR THE INSPECTION AND REGULATION OF LAND AND BUILDINGS.

[*See sections 364 (11), 380, 384 and 488.*]

Power to inspect premises for sanitary purposes.

1. (*1*) The Corporation may cause any building or other premises to be inspected for the purpose of ascertaining the sanitary condition thereof.

(*2*) If the Corporation have reason to believe that any building is used as a public lodging-house or is let out in rooms to twenty-five or more lodgers, such inspection may be made at any time by day or by night:

Provided that no such inspection shall be made by night except by an officer specially authorized by the Health Officer in that behalf.

Power to Corporation to require cleansing and lime-washing of building.

2. If it appears to the Corporation necessary for sanitary reasons so to do, they may, by written notice, require the owner or occupier of any building inspected under rule 1 to cause the same or any portion thereof to be lime-washed or otherwise cleansed, either externally or internally or both externally and internally.

Power to Corporation to require owner to secure, enclose, cleanse, or clear land or building which is untenanted, filthy or a nuisance.

3. If any land or building,—

(*a*) by reason of abandonment or disputed ownership or for any other reason, remains untenanted and thereby becomes a resort of idle and disorderly persons, or

(*b*) is in a filthy or unwholesome state, or

(*c*) is complained of by any two or more of the persons residing in its neighbourhood as a nuisance,

the Corporation, after due inquiry, may give written notice to the owner or to any person who is known or believed to claim to be the owner,

and shall also affix a copy of the said notice on the door of the building or on some conspicuous part of the land, as the case may be,

requiring the said owner or any person who is known or believed to claim to be the owner properly to secure, enclose, cleanse or clear the same or otherwise abate the nuisance.

Power to Corporation to demolish, repair or secure wall, building or fixture in a ruinous state, etc.

4. (*1*) If any wall or building, or anything affixed thereto, be deemed by the Corporation to be in a ruinous state, or likely to fall, or to be in any way dangerous, they shall forthwith cause a written notice to be served on the owner and also to be put on some conspicuous part of the wall or building or served on the occupier (if any) of the building, requiring such owner or occupier, forthwith to demolish, repair or secure such wall, building or thing as the case may require.

(*2*) The Corporation may also, if it appears to them to be necessary to do so, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building,

(Schedule XVIII.—Rules for the inspection and regulation of land and buildings.—Rules 5—7.)

for the safety of the public or the inmates thereof: and may also, after giving them such notice as the Corporation may think necessary, require the inmates of the building to vacate it.

(*3*) The provisions of this Act and of any rules or by-laws made thereunder relating to buildings shall apply to any work done in pursuance, or in consequence, of a notice issued under sub-rule (*1*).

Power to Corporation to sell materials of buildings demolished in pursuance of notice issued under rule 4.

5. If any building, or any part of a building, be demolished by the Corporation under section 510, in pursuance of a notice issued under rule 4, they may sell the materials thereof and apply the proceeds of such sale in payment of the expenses incurred, and shall, on demand, restore to the owner any surplus arising from such sale.

Further powers to Corporation with reference to insanitary or congested buildings.

6. (*1*) Whenever the Corporation consider—

(*a*) that any building is, by reason of its having no plinth or having a plinth of insufficient height, or by reason of the want of proper drainage or ventilation, or by reason of the impracticability of cleansing, attended with risk to the health of the occupiers thereof or to the inhabitants of the neighbourhood, or is for any reason likely to endanger the public health, or

(*b*) that any block of buildings is, for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid,

they may cause a written notice to be fixed to some conspicuous part of the building or block, requiring the owners or occupiers thereof, or, at the option of the Corporation, the owners of the land occupied by such building or block, to execute such works or take such measures as the Corporation may deem necessary for the prevention of such risk.

(*2*) Where any building, or part thereof, in respect of which a notice has been issued under sub-rule (*1*), has been demolished in pursuance of an order made by a Magistrate under section 364, the Corporation shall pay reasonable compensation to the owner thereof.

Power to Corporation to direct the filling up, etc., of unwholesome wells, pools, etc.

7. (*1*) When—

(*a*) any well, pool, ditch, tank, pond, pit or marshy or undrained ground, or

(*b*) any cistern, reservoir, or water-butt or any other receptacle or place where water is stored or accumulates, or

(*c*) any waste or stagnant water, whether within any private enclosure or not,

appears to the Corporation to be or to be likely to become injurious to health or offensive to the neighbourhood or in any other respect a nuisance, they may, by written notice, require the owner or occupier of the land or building to which such well, pool, ditch, tank, pond, pit, ground, cistern, reservoir, water-butt, receptacle, place or water pertains,

(Schedule XVIII.—Rules for the inspection and regulation of land and buildings.—Rules 8, 9.)

to cleanse or to fill up the same with suitable material or to drain off or remove water therefrom or to take such other order therewith as the Corporation may deem necessary.

(*2*) Where, in the opinion of the Health Officer, such well, pool, ditch, tank, pond, pit, ground, cistern, reservoir, water-butt, receptacle, place or water is or is likely to become a breeding place for mosquitoes, he may enter upon the premises to which it pertains and take such steps as he thinks proper to cleanse the same.

(*3*) If the Corporation, in exercise of the powers conferred by section 510, execute any work referred to in a notice issued under sub-rule (*1*), and if the person liable to pay the expenses of such work fails to pay the same, the Corporation may, until such expenses are paid,—

(*i*) lease any part of the land used in connection with the said well, pool, ditch, tank, pond, pit, cistern, reservoir, water-butt, receptacle, place or water, or any part of the said ground, as the case may be, or

(*ii*) retain possession of the same, or the site thereof, and utilize it for public purposes.

(*4*) If the said expenses be paid by an occupier of land, he may, in the absence of any agreement to the contrary, deduct the same from any rent due to the owner of the land.

Power to Executive Officer to take action in case of a serious nuisance affecting the public health.

8. On receipt of a written report from the Health Officer of the existence of a serious nuisance likely to affect the public health or to prove offensive to the neighbourhood, the Executive Officer may take immediate action for the abatement or removal of such nuisance.

Power to Corporation to regulate excavations.

9. (*1*) The Corporation may, by a general order, or by an order to affect such portion of Calcutta as may be specified therein, prohibit—

(*a*) the making of excavations for the purpose of taking earth therefrom, or of storing rubbish or offensive matter therein, and

(*b*) the digging of cesspools, tanks, ponds, wells or pits, without the special permission of the Corporation.

(*2*) Every such order shall be published in the *Calcutta Gazette*.

(*3*) No person shall make any excavation referred to in clause (*a*) of sub-rule (*1*), or dig any cesspool, tank, pond, well or pit, in contravention of any such order.

(*4*) If any such excavation, cesspool, tank, pond, well or pit is made or dug after the publication of any such order and without the permission required thereby, the Corporation may, by written notice, require the owner or occupier of the land on which the same is made or dug to fill it up with earth or other material approved of by the Corporation.

SCHEDULE XIX.

CERTAIN PURPOSES FOR WHICH PREMISES MAY NOT BE USED WITHOUT A LICENSE.

[*See sections 386, 389, 494 and 495, and Schedule XVII, rules 53 (4) and 81 (2).*]

(1) Casting metals.
(2) Manufacturing bricks, pottery or tiles.
(3) As a knacker's yard.
(4) As a hide godown or hide screw-house.
(5) As a manufactory or place of business from which offensive or unwholesome smells, fumes, or dust arise.
(6) As a depôt for hay, straw, wood, coal, coke, waste-paper or rags.
(7) Packing, pressing, cleansing, preparing or manufacturing, by any process whatever, any of the following articles, namely:—

cloths or threads in indigo or other colours,
paper,
pottery,
silk.

(8) Storing, packing, pressing, cleansing, preparing or manufacturing, by any process whatever, any of the following articles, namely:—

blasting powder,
blood,
bones,
brass,
candles,
catgut,
chemical preparations,
china grass,
cocoanut fibre,
cotton (other than cotton pressed into bales), or cotton refuse or seed,
dammer (resin or rosin),
dynamite,
fat (edible or non-edible),
fins,
fireworks,
fish,
flax,
flour,
fulminate of mercury,
gas,
glue,
grain,
gun-cotton,
gun-powder,
hair,
hemp,
hides,
hoofs,
horns,
iron,
jute,
kaolin,
lampblack,
leather,
lime,
manure,
matches for lighting,
meat,
molasses,
nitro-glycerine,
offal,
oil (edible or non-edible),
oil-cloth,
paint,
pakra seed,
pitch,
rags,
rosin,
saltpetre,
skins,
soap,
soap-stone,
spirits,
steel,
sugar,
sulphur,
surki,
tallow,
tar,
tin,
tobacco,
tow,
turpentine,
varnish,
verdigris,
waste-paper,
wool.

SCHEDULE XX.

FORM OF CERTIFICATE.

(*See sections 423 and 425.*)

To[1]

I, the undersigned, public analyst for the do hereby certify that I received on the day of 19 , from[2] a sample of for analysis (which then weighed[3]) and have analysed the same and declare the result of my analysis to be as follows:—

I am of opinion that the same is a sample of

Observations.[4]

Signed this day 19 .

A. B.

at

[1] Here insert the name of the person submitting the article for analysis.

[2] Here insert the name of the person delivering the sample. If the sample is received by post or by railway, entry should be made accordingly.

[3] When the article cannot be conveniently weighed, this passage may be erased or the blank may be left unfilled.

[4] Here the analyst may insert, at his discretion, his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether it was in excess of what is ordinary or otherwise.

NOTE.—In the case of a certificate regarding milk, butter or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

SCHEDULE XXI.

REGISTRATION OF BIRTHS.

(See sections 450 and 451.)

19 . Births in the district of .

1	2	3	4	5	6	7	8	9	10	11
Serial number.	Date of birth.	Place of birth.	Nationality or caste.	Name, if any.	Sex.	Name of father.	Profession of father.	Signature, description and residence of informant.	Date of registration.	Signature of Registrar.

SCHEDULE XXII.

REGISTRATION OF DEATHS.

(See sections 450, 452, 453 and 455.)

19 . *Deaths in the district of* .

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Serial number.	Date of death.	Nationality or caste.	Name.	Sex.	Age.	Profession.	Cause of death.	Name of medical attendant (if any) during last illness.	Residence at time of death.	Residence previous to last illness.	Signature, description and residence of informant.	Date of registration.	Signature of Registrar.

SCHEDULE XXIII.

FORM OF NOTICE TO BE ISSUED ON YELLOW PAPER AND AFFIXED ON PREMISES WHEN OTHER MEANS OF SERVICE NOT AVAILABLE.

(*See sections 504 and 505.*)

To (*name and address*)

[*or*, to the owner or occupier of (*number of building or description of land and number of premises in assessment-book*).]

Take notice that a bill (*or, as the case may be*) has been issued against you to the following effect (*state the substance of the document*) and that you are required to (*state the requirement as mentioned in the document*).

Dated this day of

(*Signature of municipal officer or other person issuing the notice.*)

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 1, 1923.

PART III.

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1886L., dated the 27th July, 1923.—In pursuance of the provisions of sub-section (3) of section 81 of the Government of India Act, the following Act of the Local Legislature of Bengal having been assented to by the Governor General on the 21st July, 1923, is hereby published for general information :—

BENGAL ACT V OF 1923.

THE BENGAL CHILDREN (AMENDMENT) ACT, 1923.

An Act to amend the Bengal Children Act, 1922, with a view to facilitate the early extension to the town and port of Calcutta, the suburbs of Calcutta and Howrah.

Preamble. WHEREAS it is expedient to amend the Bengal Children Act, 1922, in the manner hereinafter appearing; Ben. Act II of 1922.

And whereas the previous sanction of the Governor General has been obtained under sub-section (*3*) of section 80A of the Government of India Act to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title. **1.** This Act may be called the Bengal Children (Amendment) Act, 1923.

Amendment of section 1 of Bengal Act II of 1922. **2.** In sub-section (*2*) of section 1 of the Bengal Children Act, 1922 (hereinafter referred to as the said Act), after the word "force" the words "in whole or in part" shall be inserted and after the word "direct" the words "and for this purpose different dates may be appointed for different provisions of this Act and for different parts of the area defined in sub-section (*3*)" shall be added.

Amendment of section 28. **3.** To section 28 of the said Act the following shall be added, namely:—

"(*4*) Notwithstanding anything contained elsewhere in this Act, no order shall be passed sending a child to an industrial school, unless the court is satisfied that accommodation suitable for such child is available."

Amendment of section 37. **4.** To section 37 of the said Act the following shall be added, namely:—

"(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a Juvenile Court established for the suburbs of Calcutta, as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, or a Magistrate of the district of the 24-Parganas exercising powers under this Act, may inquire into and try in such place within Calcutta as the Local Government may direct the case of any child or young person who is accused of committing any offence within those suburbs, and such inquiry or trial shall for the purposes of jurisdiction be deemed to be held in the suburbs of Calcutta as so defined.

Any such accused person may be detained, pending trial or on conviction, in any place in Calcutta, which is set apart, under the provisions of this Act or the rules made thereunder, for the reception of children or young persons."

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 8, 1923.

PART III.

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1967L., dated Calcutta, the 3rd August, 1923.—In pursuance of the provisions of sub-section (3) of section 81 of the Government of India Act, the following Act of the Local Legislature of Bengal having been assented to by the Governor-General on the 26th July, 1923, is hereby published for general information :—

BENGAL ACT IV OF 1923.

THE BENGAL SMOKE-NUISANCES (AMENDMENT) ACT, 1923.

An Act further to amend the Bengal Smoke-Nuisances Act, 1905.

Preamble.

WHEREAS it is expedient further to amend the Bengal Smoke-Nuisances Act, 1905, in the manner hereinafter appearing; Ben. Act III of 1905.

And whereas the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Smoke-Nuisances (Amendment) Act, 1923.

Amendment of sections 6 and 7 of Bengal Act III of 1905.

2. (*1*) To clause (*a*) of sub-section (*1*) of section 6 of the Bengal Smoke-Nuisances Act, 1905, as amended by subsequent legislation (hereinafter referred to as the said Act), the words "clamps for making bricks, or" shall be added.

(*2*) In sub-section (*2*) of section 6 and in three places in section 7 of the said Act after the word "kiln" the word "clamp" shall be inserted.

Amendment of section 10.

3. In sub-section (*2*) of section 10 of the said Act—

(*a*) the word "and" at the end of clause (*j*) shall be omitted; and

(*b*) after clause (*j*) the following shall be inserted, namely:—

"(*jj*) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and the grant of permission for the working of furnaces, flues and chimneys and generally for the services of Inspectors; and".

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 8, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1958L., dated Calcutta, the 1st August, 1923.—With reference to the Report of the Select Committee on the Calcutta Suppression of Immoral Traffic Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923 and in continuation of this office notification No. 1836L., dated the 21st July, 1923, it is notified that Dr. Hassan Suhrawardy, M.L.C., has signed the report.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1964L., dated Calcutta, the 2nd August, 1923.—With reference to the footnotes to the Report of the Select Committee on the Calcutta Municipal (No. II) Bill, 1923, published in the *Calcutta Gazette*, dated the 25th July, 1923 and in continuation of this office notification No. 1848L., dated the 23rd July, 1923, it is notified that Mr. S. W. Goode, I.C.S., M.L.C., has appended the following Note of Dissent to the Report :—

THE CALCUTTA MUNICIPAL (No. II) BILL, 1923.

Note of dissent by Mr. S. W. Goode, I.C.S., M.L.C.

On the whole I would be disposed to make the qualification for the franchise accrue in the twelve months ending the 31st March instead of the twelve months ending the 30th of September. If this is done, it becomes possible for the Corporation and Government to collaborate in the preparation of an electoral roll, since the roll will then in most respects serve for the purposes of both the municipal election and the election for the Legislative Council. There will thus be a considerable economy in expenditure and labour.

Again, it is very desirable that the Corporation should have some interest in insisting on the correctness of the electoral roll prepared for the Legislative Council in respect of Calcutta. If the Corporation is merely a paid agent of Government for this purpose, it is not certain that they will take sufficient interest in the preparation of the roll, but if the electoral rolls for the Legislative Council and the Corporation are in most respects identical and are prepared by one process, the zealous attention with which the Corporation watches the preparation of its own roll will serve to ensure the accuracy of the roll for the Legislative Council.

The saving in money and labour will of course be mutually shared by the Corporation and Government.

2. The main argument in favour of adopting 30th of September as the end of the qualifying year is that a more up-to-date roll will be thereby obtained. This is undoubtedly true, and the ideal roll is of course one which corresponds most closely with facts as they exist at the time of the election. This criterion should not, however, determine the question entirely, but the decision should in my opinion be based on the balance of convenience. As a matter of fact, there will be comparatively few people qualifying in a year ending with the 30th of September, who would not have qualified in a year ending with the 31st March. An electoral roll which is based on a qualifying year ending shortly before the election must obviously coincide with the conditions as they exist at the date of election a little more closely than a roll based on earlier qualifications, but in practice the differences in the two rolls may be slight. It has been suggested that the date fixed in the Bill is a democratic solution since certain persons who have obtained the franchise under the new Act would be barred from voting if the qualifying year were to end on the 31st March. This view is surely mistaken. The persons enfranchised under the new Act will ordinarily have possessed the qualifications entitling them to the franchise in the year ending the 31st March 1923, no less than in the year ending the 30th September 1923.

Finally, I think it is necessary to attach considerable weight to the views of the Corporation executive. Reasons have been given for holding that there will be difficulty in preparing the electoral roll with proper thoroughness and care if qualifications continue to accrue up to the 30th of September prior to the election. On the whole I think there are strong grounds for holding that in the present case the qualifying year should be made to end on the 31st March.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 15, 1923.

PART III.

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2032L., dated Calcutta, the 7th August, 1923.—In pursuance of the provisions of sub-section (*4*) of section 81 of the Government of India Act, the following Act of the Local Legislature of Bengal having been assented to by the Governor General on the 1st August, 1923, is hereby published for general information :—

BENGAL ACT VI OF 1923.

THE CALCUTTA PORT (AMENDMENT) ACT, 1923.

An Act further to amend the Calcutta Port Act, 1890.

Preamble. WHEREAS it is expedient further to amend the Calcutta Port Act, 1890, in the manner hereinafter appearing ; Ben. Act III of 1890.

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act ; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows :—

Short title. **1.** This Act may be called the Calcutta Port (Amendment) Act, 1923.

(*Sections 2, 3.*)

New sections 24B and 24C.

2. After section 24A of the Calcutta Port Act, 1890 (hereinafter called the said Act), the following shall be inserted, namely:—

"24B. (*1*) The Commissioners in meeting may, from time to time, set aside such sums out of their revenue surplus, as they think fit, as a reserve fund or funds for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, ship-wreck or other accident or for any other emergency arising in the ordinary conduct of their work under this Act:

Establishment of reserve fund.

Provided that the sums set aside as a reserve fund or funds shall not exceed such amount, annual or in the aggregate, as shall from time to time be prescribed by the Local Government.

(*2*) Such reserve fund or funds may be invested only in the promissory notes and other securities of the Government of India, or in the debentures issued by the Commissioners under this Act.

24C. (*1*) For the purposes of any investment which the Commissioners are authorised to make by this Act, it shall be lawful for the Commissioners in meeting to reserve and set apart any debentures or securities to be issued by them on account of any loan to which the approval of the Local Government has been given:

Power to reserve debentures or securities for Commissioners.

Provided that in the case of any issue offered to the public, the intention so to reserve and set apart such debentures or securities shall have been notified as a condition of the issue of the loan.

(*2*) The issue of any such debentures or securities direct to and in the name of the Commissioners themselves shall not operate to extinguish or cancel such debentures or securities, but every debenture or security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(*3*) The purchase by the Commissioners or the transfer, assignment or endorsement to the trustees of the sinking fund or the Commissioners, of any debenture or security issued by the Commissioners, shall not operate to extinguish or cancel any such debenture or security, but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred, assigned or endorsed to any other person."

Amendment of section 30.

3. In the proviso to section 30 of the said Act, for the words, letter and brackets "except clause (*g*) thereof" the following shall be substituted, namely:—

"except clauses (*g*) and (*h*) thereof."

(*Sections 4, 5.*)

Insertion of new section 30A.

4. After section 30 of the said Act, the following shall be inserted, namely :—

"30A. The Commissioners may, with the approval of the Local Government,—

Power to Commissioners to establish a provident fund and to grant long service bonuses.

(*i*) establish a provident fund for the benefit of their officers and servants appointed in accordance with the provisions of this Act, and compel all or any of such officers and servants to contribute to, and make supplementary contributions to, such provident fund and make payments thereout in accordance with the rules of such fund; and

(*ii*) make payments out of their general revenues of bonuses, based on the length of service of the officers and servants appointed in accordance with this Act, to such officers and servants or to the widows or dependent children of such of them as may die while still in the service of the Commissioners."

Amendment of section 31.

5. In section 31 of the said Act,—

(*1*) in sub-section (*1*)—

(*a*) the word "and" at the end of clause (*f*) shall be omitted;

(*b*) after clause (*f*) the following shall be inserted, namely :—

"(*g*) for prescribing the rates and the conditions under which contributions may be paid by the Commissioners and their officers and servants to the provident fund which may be established under section 30A, and for determining the conditions of payments from the fund and the conditions of payments under clause (*ii*) of section 30A of bonuses based on length of service; and"

(*c*) the existing clause (*g*) shall be renumbered as clause (*h*);

(*2*) in sub-section (*2*) for the word, letter and brackets "clause (*g*)" the word, letter and brackets "clause (*h*)" shall be substituted;

(*3*) in sub-section (*3*) for the words, letter and brackets "or clause (*g*)" the following shall be substituted, namely :—

"and under clauses (*g*) and (*h*)."

(Sections 6—9.)

Amendment of section 71.

6. For sub-section (*1*) of section 71 of the said Act, the following shall be substituted, namely :—

"(*1*) The estimate as sanctioned by the Commissioners shall, not later than the first day of March next following, be submitted to the Local Government, who may, at any time prior to the first day of April next following, either disallow or modify such estimate, or any portion thereof, and return the same for amendment."

New section 72A.

7. After section 72 of the said Act, the following shall be inserted, namely :—

"72A. The Commissioners in meeting shall be at liberty, in any year, to expend, in addition to the sums sanctioned by the estimate for that year as approved by the Local Government,—

Excess expenditure by Commissioners.

(*a*) any sum or sums chargeable to revenue, the expenditure of which shall in their opinion be necessary and which could not reasonably have been anticipated at the time of the preparation of the estimate, if and when such sums are covered by their revenue earnings received up to the time of such expenditure;

(*b*) any sum or sums on any object not included in or estimated for in the estimate, if and when such sums can be met from ascertained savings on the estimate as a whole :

Provided that in pursuance of the provisions of this clause—

(*i*) not more than fifty thousand rupees shall be expended on any one object, and

(*ii*) without the sanction of the Local Government, not more than one lakh and fifty thousand rupees shall be expended in any one year.

The Commissioners shall submit annually to the Local Government a statement of all such expenditure."

New section substituted for section 73.

8. For section 73 of the said Act, the following shall be substituted, namely :—

"73. Subject to the provisions of section 72A, no sum exceeding twenty thousand rupees shall, except in cases of pressing emergency, be expended by, or on behalf of, the Commissioners unless such sum is included in an estimate at the time in force which has been finally approved by the Local Government."

Adherence to estimate.

Amendment of section 74.

9. In section 74 of the said Act, for the words "five thousand rupees" the words "twenty thousand rupees" shall be substituted.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2078L, dated Calcutta, the 11st August, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the Local Legislature of Bengal having been assented to by the Governor General on the 4th August, 1923, is hereby published for general information.

BENGAL ACT VIII OF 1923.

THE BENGAL VILLAGE-CHAUKIDARI (AMENDMENT) ACT, 1923.

An Act further to amend the Village-chaukidari Act, 1870.

WHEREAS it is expedient further to amend the Village-chaukidari Act, 1870, in the manner hereinafter appearing : Ben. Act VI of 1870.

It is hereby enacted as follows :—

Short title. **1.** This Act may be called the Bengal Village-chaukidari (Amendment) Act, 1923.

New section substituted for section 11 of Bengal Act VI of 1870. **2.** For section 11 of the Village-chaukidari Act, 1870, the following shall be substituted, namely :

"11. The *panchayet* of a village shall determine the number of chaukidars to be appointed for that village, subject to the approval of the District Magistrate. Number of chaukidars.

Notwithstanding anything contained in this section, the number of chaukidars, employed for any village on the day on which the Bengal Village-chaukidari (Amendment) Act, 1923, comes into operation, shall continue to be the same until altered under the provisions of this section."

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Ligislalive Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 29, 1923.

PART III.

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2185L., dated Calcutta, the 25th August, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the Local Legislature of Bengal having been assented to by the Governor General on the 17th August, 1923, is hereby published for general information.

BENGAL ACT VII OF 1923.

THE BENGAL AERIAL ROPEWAYS ACT, 1923.

CONTENTS.

Discontinuance of Aerial Ropeways for Public Traffic.

SECTION.

22. Cessation of powers of promoter on discontinuance of aerial ropeway.
23. Power of removal of aerial ropeway on cessation of promoter's powers.

Purchase of Aerial Ropeways for Public Traffic.

24. Power of Local Government and local authorities to purchase aerial ropeways for public traffic.
25. Power to promoter to sell when option to purchase not exercised and order revoked by consent.

Inability or Insolvency of Promoter.

26. Proceedings in case of inability or insolvency of promoter.

By-laws.

27. Power of promoter to make by-laws.

CHAPTER III.

PRIVATE AERIAL ROPEWAYS FOR CERTAIN PURPOSES.

28. Application for acquisition of land in case of certain private aerial ropeways.
29. Agreement.
30. Temporary occupation of land in case of private aerial ropeway.

CHAPTER IV.

OFFENCES, PENALTIES AND ARREST.

31. Failure of promoter to comply with Act.
32. Unlawfully obstructing promoter in exercise of his powers.
33. Unlawfully interfering with aerial ropeway.
34. Maliciously doing, abetting or attempting to do, acts endangering safety of persons travelling or being upon aerial ropeway.
35. Arrest for offences against certain sections.

CHAPTER V.

SUPPLEMENTARY PROVISIONS.

36. Returns.
37. Protection of roads, railways, tramways and waterways.
38. Acquisition of land by a promoter.
39. Limitation of claims for damage to animals or goods.
40. Application of Act to certain private aerial ropeways.
41. Power of Local Government to constitute an Advisory Board for aerial ropeways.
42. Power of Local Government to make rules.

THE BENGAL AERIAL ROPEWAYS ACT, 1923.

An act to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal.

Preamble. WHEREAS it is expedient to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title, local extent and commencement. **1.** (*1*) This Act may be called the Bengal Aerial Ropeways Act, 1923;

(*2*) It extends to the whole of Bengal, except the Hill-tracts of Chittagong; and

(*3*) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct:

Provided that it shall come into operation in the Darjeeling district only on such date and subject to such exceptions and modifications as the Governor in Council may, by notification in the *Calcutta Gazette*, direct.

Definitions. **2.** In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "aerial ropeway" means an aerial ropeway (or any portion thereof) for the carriage of passengers, animals or goods, and includes all posts, ropes, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to, such aerial ropeway;

(*2*) "carrier" means any vehicle or receptacle hung or suspended from, or hauled by, a rope and used for the carriage of passengers, animals or goods or for any other purpose in connection with the working of an aerial ropeway;

(*3*) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act;

(*4*) "Inspector" means an Inspector of aerial ropeways appointed under this Act;

The Bengal Aerial Ropeways Act, 1923.

(Chapter I.—Preliminary.—Chapter II.—Aerial Ropeways for Public Traffic.—Procedure and Preliminary Investigations.—Section 3.)

(*5*) "local authority" means a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, and also includes a Local Board;

(*6*) "order" means an order authorising the construction of an aerial ropeway under this Act;

(*7*) "post" means a post, trestle, standard, strut, stay or other contrivance or part of a contrivance for carrying, suspending or supporting a rope;

(*8*) "prescribed" means prescribed by rules made by the Local Government under section 42;

(*9*) "promoter" means—

(*i*) the Local Government,

(*ii*) a local authority,

(*iii*) any person,

(*iv*) any company incorporated under the Indian Companies Act, 1913, or VII of 1913.

(*v*) any railway company as defined in the Indian Railways Act, 1890, IX of 1890.

in whose favour an order has been made under section 7 or under section 28, or on whom the rights and liabilities conferred and imposed on the promoter by this Act, and by rules and orders made under this Act as to the construction, maintenance and use of the aerial ropeway, have devolved or have been imposed by section 40;

(*10*) "rate" includes any fare, charge or other payment for the carriage of passengers, animals or goods on an aerial ropeway; and

(*11*) "rope" includes any cable, wire, rail or way, whether flexible or rigid, for suspending, carrying or hauling a carrier, if any part of such cable, wire, rail or way is carried overhead and is suspended from, or supported on, posts.

CHAPTER II.

Aerial Ropeways for Public Traffic.

Procedure and Preliminary Investigations.

Application for concession. **3.** Every application by an intending promoter other than the Local Government for permission to undertake the necessary preliminary investigations in regard to a proposed aerial ropeway for the public carriage of passengers, animals or goods shall be submitted to the Local Government.

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Procedure and Preliminary Investigations.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Sections 4-6.)

Contents of application.

4. Every such application shall include—

(*a*) a description of the undertaking and of the route to be followed by the proposed aerial ropeway;

(*b*) a description of the system of construction and management and of the advantages to the community to be expected from the ropeway;

(*c*) an estimate of the cost of construction thereof;

(*d*) a statement of the estimated working expenses and profits in respect thereof;

(*e*) a statement of the maximum and minimum rates which it is proposed to charge;

(*f*) such maps, plans, sections and drawings in connection therewith as the Local Government may require in order to form an idea of the proposal.

Preliminary investigations.

5. Subject to the provisions of this Act, and of section 4 of the Land Acquisition Act, 1894, the Local Government may, at their discretion, accord sanction to the intending promoter to make such surveys as may be necessary, and require him to submit such detailed estimates, plans, sections and specifications and such further information as they may deem necessary for the full consideration of the proposal. I of 1894

The intending promoter shall not be entitled to claim any compensation from Government for any expense incurred under this section in the event of his application being ultimately refused.

Orders authorising the Construction of Aerial Ropeways for Public Traffic.

Order authorising construction and contents of such order.

6. (*1*) The Local Government may, on application made by any intending promoter, and after due consideration of the details supplied in accordance with section 5, publish in the *Calcutta Gazette* a draft of the proposed order authorising the construction by, or on behalf of, such promoter, subject to such restrictions and conditions as the Local Government may think proper, of an aerial ropeway within any specified area or along any specified route—

(*a*) for the public carriage of passengers;

(*b*) for the public carriage of passengers, animals and goods; or

(*c*) for the public carriage of animals and goods.

(*2*) A notice shall be published with the draft order stating that any objection or suggestion which any person may desire to make with respect to the proposed order, if submitted to the Local Government within such period, not being less than two months from the date of such publication as may be specified in the notice, will be received and considered.

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Section 6.)

(3) The Local Government shall also cause public notice of the intention to make the order to be given at convenient places within the said area or along the said route, and shall, so far as may be conveniently possible, cause a like notice to be served on every owner or occupier of land over which such route lies, and shall consider any objection or suggestion, with respect to the proposed order, which may be received from any person within the date specified in such notice and decide thereon.

(4) The draft of the proposed order may specify—

(i) a time within which the capital required for the construction of the aerial ropeway shall be raised;

(ii) a time within which the construction shall be commenced;

(iii) a time within which the construction shall be completed;

(iv) the conditions under which a concession, guarantee or financial assistance may be given by the Local Government or a local authority to the promoter;

(v) the rights of purchase by the Local Government or by a local authority;

(vi) the conditions relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary;

(vii) the conditions relating to the construction of the ropeway over mining properties in accordance with rules made under section 42 and over roads and other public ways of communication except such railways and tramways as are referred to in clause (a) of item 5 of Part I of Schedule I to the Devolution Rules, and with the previous sanction of the Governor General in Council over such railways and tramways;

(viii) the conditions under which the promoter may sell or transfer his rights to the Local Government or to a local authority, company or person;

(ix) the conditions under which the ropeway may be taken over by the Local Government to be worked by itself or by a local authority or by a company or person other than the promoter;

(x) the motive power to be used on the ropeway and the conditions (if any) on which such power may be used;

(xi) the minimum headway to be maintained under different parts of the rope;

The Bengal Aerial Ropeways Act, 1923.

(*Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Inspection of Aerial Ropeways for Public Traffic.—Sections 7-10.*)

(*xii*) the points under the rope at which bridges or guards shall be constructed and maintained;

(*xiii*) the amount of security (if any) to be deposited by the promoter in the event of his application being granted;

(*xiv*) the traffic which may be carried on the ropeway, the traffic which the promoter shall be bound to carry, and the traffic which he may refuse to carry;

(*xv*) the maximum and minimum rates that may be charged by the promoter and the circumstances in which and the manner in which these rates may be revised by the Local Government; and

(*xvi*) such other matters as the Local Government may deem necessary.

Final order.

7. (*1*) If, after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the Local Government are of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, they shall make an order accordingly.

(*2*) Every order authorising the construction of an aerial ropeway for the public carriage of passengers, animals or goods shall be published in the *Calcutta Gazette*, and such publication shall be conclusive proof that the order has been made as required by this section.

Cessation of powers given by an order.

8. If a promoter authorised by an order to construct an aerial ropeway for the public carriage of passengers, animals or goods does not, within the time specified in the order,—

(*a*) succeed in raising the full amount of capital required for the completion of the ropeway, or

(*b*) substantially commence the construction of the ropeway, or

(*c*) complete the construction thereof,

the powers given to the promoter by such order shall, unless the Local Government prolongs the time so specified, cease to be exercised.

Opening of aerial ropeway to passenger traffic.

9. When the construction of an aerial ropeway has been authorised under this Act, for the public carriage of animals and goods only, the Local Government may, on application made by the promoter, sanction the opening of such ropeway for the public carriage of passengers also.

Inspection of Aerial Ropeways for Public Traffic.

Inspection of aerial ropeway before opening.

10. (*1*) No aerial ropeway intended for the public carriage of passengers, animals or goods shall be

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Inspection of Aerial Ropeways for Public Traffic.—Sections 11-13.)

opened for any kind of traffic until the Local Government or an Inspector empowered by the Local Government in this behalf has, by an order, sanctioned the opening thereof for that purpose. The sanction of the Local Government under this section shall not be given until an Inspector has, after inspection of the ropeway, reported in writing to the Local Government—

(*a*) that he has made a careful inspection of the ropeway and appurtenances;

(*b*) that the moving and fixed dimensions and other conditions prescribed under sub-section (*4*) of section 6 and sub-section (*1*) of section 7 have been complied with;

(*c*) that the ropeway is sufficiently equipped for the traffic for which it is intended;

(*d*) that the by-laws and rules prescribed by sections 27 and 42 have been duly made, approved and published; and

(*e*) that the ropeway is, in his opinion, fit for public traffic and can be used without danger either to the persons, animals or goods carried thereon, or to the persons employed thereon, or to the general public.

(*2*) The provisions of sub-section (*1*) shall extend to the opening of additional sections of the ropeway, and to deviation lines and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sub-section (*1*) apply or are extended by this sub-section.

Appointment and duties of Inspectors.

11. (*1*) The Local Government may appoint such persons as they deem fit to be Inspectors of aerial ropeways for the public carriage of passengers, animals or goods, and may fix the fees to be charged to promoters for the performance by Inspectors of their duties under this Act.

(*2*) It shall be the duty of any such Inspector from time to time to inspect such ropeways, and to determine whether they are maintained in a fit condition and worked with due regard to the convenience and safety of the persons using them and of the general public, and consistently with the provisions of this Act.

Powers of Inspectors.

12. An Inspector shall, for the purpose of any of the duties which he is authorised or required to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and shall, for that purpose, have such powers as may be prescribed. Act XLV of 1860.

Facilities to be afforded to Inspectors.

13. The promoter, and his servants and agents, shall afford to an Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act, or by rules made thereunder.

The Bengal Aerial Ropeways Act, 1923.

(*Chapter II.—Construction and Maintenance of Aerial Ropeways for Public Traffic.—Sections 14, 15.*)

Construction and Maintenance of Aerial Ropeways for Public Traffic.

Authority of promoter to execute all necessary works.

14. (*1*) Subject to the provisions of, and to the rules made under, this Act, and, in the case of immovable property not belonging to the promoter, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a promoter of an aerial ropeway for public traffic may—

(*a*) make such survey as he thinks necessary;

(*b*) place and maintain posts in or upon any immovable property;

(*c*) suspend and maintain a rope over, along or across any immovable property;

(*d*) make such bridges, culverts, drains, embankments and roads as may be necessary;

(*e*) erect and construct such machinery, offices, stations, warehouses and other buildings, works and conveniences as may be necessary; and

(*f*) do all other acts necessary for constructing, maintaining, altering, repairing and using the aerial ropeway:

Provided that a promoter may take any action under clause (*b*) or clause (*c*) of this sub-section, notwithstanding the objection of the owner or occupier of the property affected thereby if the Collector, after giving such owner and occupier by notice in writing an opportunity of being heard, by an order in writing, permits such action.

(*2*) When making an order under the proviso to sub-section (*1*), the Collector shall fix the amount of compensation or of annual rent or of both which should, in his opinion, be paid by the promoter to the owner of the property affected thereby, or, in the case of immovable property, to the owner or occupier thereof.

Temporary entry upon land for repairing or preventing accident.

15. (*1*) Subject to the rules made under this Act a promoter may, at any time, for the purpose of examining, repairing or altering an aerial ropeway for public traffic or of preventing any accident, enter upon any immovable property adjoining such ropeway, and may do all such works as may be necessary for such purpose.

(*2*) In the exercise of the powers conferred by sub-section (*1*), the promoter shall cause as little damage as possible, and compensation shall be paid by him for any damage so caused: and, in a case of dispute as to the amount of such compensation, or the person to whom it shall be paid, the matter shall be referred to the decision of the Collector.

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Construction and maintenance of Aerial Ropeways for Public Traffic.—Working of Aerial Ropeways for Public Traffic.—Sections 16-20.)

Removal of trees, structures, etc.

16. (*1*) Where any tree standing or lying near an aerial ropeway for public traffic, or where any structure or other object which has been placed or has fallen near any such ropeway subsequently to the issue of an order under section 7 in regard to such ropeway, interrupts or interferes with, or is likely to interrupt or interfere with, the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

(*2*) When disposing of an application under sub-section (*1*), the Collector shall, in the case of any tree in existence before the construction of the aerial ropeway, award to the person interested in the tree such compensation, if any, as he thinks reasonable, and the Collector may recover the same from the promoter in the same manner as an arrear of land revenue.

Explanation.—For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant.

Orders of Collector subject to revision by Local Government.

17. No suit shall lie, in respect of any matter referred to in the proviso to sub-section (*1*) of section 14, sub-section (*2*) of section 14, section 15 or sub-section (*1*) of section 16, but every order made by a Collector under any of those sections, and every award made by him under sub-section (*2*) of section 16, shall be subject to revision by the Local Government except in the case of an award of compensation made by the Collector on account of action taken under clause (*c*) of sub-section (*1*) of section 14, which award shall be subject to revision by the District Judge.

Working of Aerial Ropeways for Public Traffic.

Promoter may fix rates.

18. The promoter of an aerial ropeway for public traffic shall, for the purposes of working an aerial ropeway, and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix the rates for the carriage of passengers, animals or goods on the aerial ropeway.

Duty of promoter to work aerial ropeway without partiality.

19. No promoter shall, for the purposes of working an aerial ropeway for public traffic, make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in any respect whatsoever, or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Reporting of accidents.

20. When any of the following accidents occur in the course of working an aerial ropeway for public traffic, namely :—

(*a*) any accident attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; Act XLV of 1860.

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Working of Aerial Ropeways for Public Traffic.—Discontinuance of Aerial Ropeways for Public Traffic.—Sections 21, 22.)

(*b*) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property;

(*c*) any accident of any other description which the Local Government may specify in this behalf in the rules made under this Act;

the promoter shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector of the aerial ropeway;

and the promoter's servant in charge of the station on the aerial ropeway nearest to the place at which the accident occurred or, where there is no station, the promoter's servant in charge of the section of the aerial ropeway on which the accident occurred shall, with the least possible delay, give notice of the accident to the Magistrate of the district in which the accident occurred and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Local Government may appoint in this behalf.

Power to close and re-open aerial ropeway.

21. (*1*) If, after inspecting any aerial ropeway opened to public traffic, an Inspector is of opinion that the ropeway or any specified part thereof cannot be used without danger to the public, or is no longer in a fit state for the carriage of any specified class of traffic, he shall state that opinion, together with the grounds therefor, to the Local Government;

and the Local Government, after such further inquiry, if any, as they may think fit, may thereupon order that, for reasons to be set forth in the order, the aerial ropeway, or the part thereof so specified, be closed to all traffic or to any specified class of traffic:

Provided that, in any case of extreme urgency, the Inspector may order the suspension of the working of the ropeway or any part thereof which he considers necessary, pending the orders of the Local Government on the case.

(*2*) When, under sub-section (*1*), an aerial ropeway or any part thereof has been closed to any traffic, it shall not be re-opened to such traffic until it has been inspected, and its re-opening sanctioned, in the prescribed manner.

Discontinuance of Aerial Ropeways for Public Traffic.

Cessation of powers of promoter on discontinuance of aerial ropeway.

22. If, at any time after the opening of an aerial ropeway for public traffic, it is proved to the satisfaction of the Local Government that the promoter has, for three months, discontinued the working of the ropeway or of any part thereof, without a reason sufficient, in the opinion of the Local Government, to warrant such discontinuance, the Local Government, if they think fit, may declare that the powers of the promoter in respect of such aerial ropeway or part thereof shall be at an end; and thereupon the said powers shall cease and determine.

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Discontinuance of Aerial Ropeways for Public Traffic.—Purchase of Aerial Ropeways for Public Traffic.—Sections 23, 24.)

Power of removal of aerial ropeway on cessation of promoter's powers

23. (*1*) When a declaration has been made under section 22, in respect of any aerial ropeway or of any part thereof, an officer appointed in that behalf by the Local Government may, at any time after the expiration of two months from the date determined as aforesaid, remove such aerial ropeway or part thereof, as the case may be ;

and the promoter shall pay to the officer so appointed such costs of removal as shall be certified by that officer to have been incurred by him.

(*2*) If the promoter fails to pay the amount of costs so certified within one month after the delivery to him of the certificate or of a copy thereof, such officer may, without any previous notice to the promoter and without prejudice to any other remedy which he may have for the recovery of the said amount, sell and dispose of the materials of the aerial ropeway or part thereof so removed ;

and may, out of the proceeds of the sale, pay and reimburse himself the amount of costs certified as aforesaid and of the costs of the sale ;

and shall pay over the residue (if any) of such proceeds to the promoter.

Purchase of Aerial Ropeways for Public Traffic.

Power of Local Government and local authorities to purchase aerial ropeways for public traffic

24. (*1*) When an order under section 7 has been made in favour of a promoter of an aerial ropeway for public traffic, not being the Local Government, or a local authority, the Local Government, or a local authority specified in the order published under section 7, shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in such order, have the option of purchasing the undertaking, and if the Local Government, or the local authority with the previous sanction of the Local Government, elect to purchase, the promoter shall sell the undertaking to the Local Government or to the local authority as the case may be, on payment of the value of all lands, buildings, works, materials, plant and apparatus of the promoter, suitable to, and used by him for the purposes of, the undertaking, such value to be in case of difference or dispute determined by arbitration :

Provided that the value of such lands, buildings, works, materials, plant and apparatus shall be deemed to be their fair market value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, plant and apparatus, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking :

Provided also that there shall be added to such value, as aforesaid, such percentage, if any, not

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Purchase of Aerial Ropeways for Public Traffic.—Inability or Insolvency of Promoter.—Sections 25, 26.)

exceeding twenty *per cent.* of that value, as may be specified in the order passed under section 7, on account of compulsory purchase.

(*2*) Where a purchase has been effected under sub-section (*1*)—

(*a*) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the promoter or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(*b*) save as aforesaid, the order published under section 7 shall remain in full force, and the purchaser shall be deemed to be the promoter :

Provided that where the Local Government elects to purchase, the order under section 7 shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation.

(*3*) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the promoter by the Local Government or the local authority, as the case may be.

(*4*) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Local Government, waive its option to purchase, and enter into an agreement with the promoter for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (*1*) upon such terms and conditions as may be stated in the agreement.

Power to promoter to sell when option to purchase not exercised and order revoked by consent.

25. Where, on the expiration of any of the periods referred to in section 24, neither the Local Government nor a local authority purchases the undertaking, and the order published under section 7 is, on the application or with the consent of the promoter, revoked, the promoter shall have the option of disposing of all lands, buildings, works, materials, plant and apparatus belonging to the undertaking in such manner as he may think fit.

Inability or Insolvency of Promoter.

Proceedings in case of inability or insolvency of promoter.

26. (*1*) If, at any time after the opening of an aerial ropeway for public traffic, it appears to the Local Government that the promoter is insolvent or is unable to maintain the ropeway, or to work the same with advantage to the public, or at all, the Local Government may declare that the powers of the promoter, in respect of such aerial ropeway, shall, at the

The Bengal Aerial Ropeways Act, 1923.

(Chapter II.—Inability or Insolvency of Promoter.—By-laws.—Section 27.)

expiration of six months from the date of such declaration, be at an end; and thereupon the said powers shall, at the expiration of that period, cease and determine.

(*2*) At any time after the expiration of the said six months, an officer appointed by the Local Government in that behalf, may, notwithstanding anything contained in the Provincial Insolvency Act, 1920, remove the aerial ropeway in the same manner and subject to the same provisions as to the payment of costs and to the same remedy for the recovery thereof, in every respect, as in cases of removal under section 23. V of 1920.

By-laws.

Power of promoter to make by-laws

27. (*1*) A promoter of an aerial ropeway for public traffic shall, subject to the provisions of sub-section (*3*), make by-laws—

(*a*) for regulating the rate of speed at which carriers are to be moved or propelled;

(*b*) for declaring what shall be deemed to be dangerous or offensive goods, and for regulating the carriage of such goods;

(*c*) for regulating the maximum number of passengers and animals, and the maximum weight of goods, to be carried in each carrier;

(*d*) for regulating the use of steam-power, or any other mechanical power or electrical power, on the aerial ropeway;

(*e*) for regulating the conduct of the promoter's servants;

(*f*) for regulating the terms and conditions on which the promoter will warehouse or retain goods at any station on behalf of the consignee or owner of such goods; and

(*g*) generally for regulating the travelling upon, and the use, working and management of, the aerial ropeway.

(*2*) Such by-laws may provide that any person who contravenes the provisions of any of them shall be liable to fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a breach of a by-law made under clause (*e*) of sub-section (*1*), the promoter's servant responsible for the same shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the promoter from his pay.

(*3*) A by-law made under this section shall not take effect until it has been confirmed by the Local Government and published in the *Calcutta Gazette*:

Provided that no such by-law shall be so confirmed until it has been previously published by the promoter in such manner as may be prescribed.

The Bengal Aerial Ropeways Act, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Sections 28, 29.)

CHAPTER III.

Private Aerial Ropeways for certain purposes.

Application for acquisition of land in case of certain private aerial ropeways.

28. (*1*) Where the Local Government are satisfied that the construction, extension, working or management of an aerial ropeway for private traffic is likely to prove useful to the public by reason of its facilitating the transport of commodities in general use or is required for the conservation or service of undertakings supplying those commodities, and where the intending promoter of such aerial ropeway is desirous of obtaining any land for the purpose of such construction, extension, working or management, the Local Government may, on the application of such promoter, acquire on his behalf such land under the provisions of Part VII of the Land Acquisition Act, 1894, or procure the temporary occupation of the same under the provisions of Part VI of that Act, whether the said intending promoter is or is not a company as defined in that Act. I of 1894.

(*2*) The Local Government shall by notification in the *Calcutta Gazette* declare the commodities which shall be deemed to be commodities in general use for the purposes of sub-section (*1*).

Agreement.

29. (*1*) No order shall be made by the Local Government under sub-section (*1*) of section 28 until an inquiry has been held as hereinafter provided and the intending promoter has entered into an agreement with the Government in respect of the matters mentioned in sub-section (*4*).

(*2*) Such inquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(*3*) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court. Act V of 1908.

(*4*) Such officer shall report to the Local Government the result of the inquiry, and if the Local Government are satisfied that the ropeway is or is likely to be useful to the public, they shall, subject to any rules made under section 42, require the intending promoter to enter into an agreement with the Government, providing to the satisfaction of the Local Government for the following matters, namely :—

(*a*) the terms on which the ropeway shall be held by the promoter ;

(*b*) the time within which, and the conditions on which, the ropeway shall be constructed, maintained and used.

(*5*) Every such agreement shall, as soon as may be after its execution, be published in the *Calcutta Gazette*.

The Bengal Aerial Ropeways Act, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Chapter IV.—Offences, Penalties and Arrest.—Sections 30, 31.)

Temporary occupation of land in case of private aerial ropeway.

30. If land is to be occupied temporarily in accordance with the provisions of sub-section (*1*) of section 28 on behalf of the promoter of an aerial ropeway for private traffic, and if the Local Government on the application of the promoter so direct, then the provisions of Part VI of the Land Acquisition Act, 1894, shall apply to such occupation, subject to the provisions that, notwithstanding anything contained in section 35 of the Land Acquisition Act, 1894, the occupation and use by the promoter of the land occupied shall continue for such period, not exceeding ten years, as the Local Government may fix, and that the compensation payable to the persons interested in such land shall be fixed with due regard to any additional loss or inconvenience caused to them by reason of such period of occupation, including loss caused by the interruption of the getting of minerals by reason of such occupation. I of 1894

CHAPTER IV.

Offences, Penalties and Arrest.

Failure of promoter to comply with Act.

31. If a promoter of an aerial ropeway for public traffic—

(*a*) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under section 7, or

(*b*) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of section 10, or

(*c*) fails to comply with the provisions of section 13, or

(*d*) fails to pay within a reasonable time any compensation awarded by the Collector or by the Local Government under sections 14, 15, 16 or 17, or

(*e*) contravenes any of the provisions of section 19, or

(*f*) fails to send notice of any accident as required by section 20, or

(*g*) fails to close an aerial ropeway in accordance with an order passed under sub-section (*1*) of section 21, or re-opens any aerial ropeway in contravention of sub-section (*2*) of that section, or

(*h*) continues to exercise the powers of a promoter in respect of any aerial ropeway, in contravention of the provisions of section 22 or section 26, or

(*i*) fails to comply with the provisions of section 27 or section 36, or

(*j*) contravenes any of the provisions of section 37, or

(*k*) contravenes the provisions of any rule made under section 42,

The Bengal Aerial Ropeways Act, 1923.

(Chapter IV.—Offences, Penalties and Arrest.—Sections 32-35.)

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act, or of any other remedy which may be obtained against him) be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, to a further fine which may extend in the case of an offence specified in sub-clause (*d*), (*e*), (*f*), (*i*), (*j*) or (*k*) to fifty rupees, and in the case of an offence specified in sub-clause (*a*), (*b*), (*c*), (*g*) or (*h*) to one thousand rupees for every day after the first during which the offence continues to be committed.

Unlawfully obstructing promoter in exercise of his powers.

32. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing, maintaining, altering, repairing or working an aerial ropeway, or injures or destroys any mark made for the purpose of setting out the line or route of such ropeway, he shall be punished with fine which may extend to two hundred rupees.

Unlawfully interfering with aerial ropeway

33. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully does any of the following things, namely:—

(*a*) interferes with, removes or alters any part of an aerial ropeway or of the works connected therewith,

(*b*) does anything in such a manner as to obstruct any carrier travelling on an aerial ropeway,

(*c*) attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (*a*) or clause (*b*), Act XLV of 1860.

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punishable with fine which may extend to two hundred rupees.

Maliciously doing, abetting or attempting to do, acts endangering safety of persons travelling or being upon aerial ropeway.

34. If any person does anything mentioned in clauses (*a*), (*b*) or (*c*) of section 33 or does, attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of any other act or thing in relation to an aerial ropeway with intent or with knowledge that he is likely to endanger the safety of any person travelling or being upon the aerial ropeway, he shall be punished with imprisonment for a term which may extend to fourteen years.

Arrest for offences against certain sections.

35. (*1*) If any person commits any offence under section 32 which obstructs the working of an aerial ropeway for public traffic, or commits any offence punishable with imprisonment under section 34, he may be arrested without warrant or other written authority by any servant of the promoter, or by any police-officer or by any other person whom such servant or officer may call to his aid.

(*2*) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or to commit him for trial.

The Bengal Aerial Ropeways Act, 1923.

(Chapter V.—Supplementary Provisions.—Sections 36-40.)

CHAPTER V.

Supplementary Provisions.

Returns.

36. A promoter of an aerial ropeway for public traffic shall, in respect of such ropeway, submit to the Local Government returns of capital, receipts and traffic at such intervals and in such forms as may be prescribed.

Protection of roads, railways, tramways and waterways.

37. No promoter of an aerial ropeway shall, in the course of the construction, repair, working or management of such ropeway, cause any permanent injury to any public road, railway, tramway or waterway, or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway, tramway or waterway.

Acquisition of land by a promoter.

38. The Local Government may, if they think fit, on the application of any promoter of an aerial ropeway for public traffic desirous of obtaining any land for the purpose of constructing, working or managing such ropeway, direct that he may, subject to the provisions of this Act, acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the promoter were a company. I of 1894.

Limitation of claims for damage to animals or goods.

39. No person shall be entitled to a refund of an overcharge in respect of animals or goods carried by an aerial ropeway for public traffic or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the promoter within six months from the date of the delivery of the animals or goods for carriage by the ropeway.

Application of Act to certain private aerial ropeways.

40. *(1)* Sections 1, 2, 11, 12, 13, 14, 15, 16, 20 and 21, clauses *(a)*, *(f)*, *(g)*, *(j)* and *(k)* of section 31, sections 34, 35 and 37, and sub-sections *(1)* and *(3)* and clauses *(b)*, *(c)*, *(d)*, *(e)*, *(g)*, *(h)*, *(m)*, *(o)*, *(p)*, and *(q)* of sub-section *(2)* of section 42 shall also apply to the private aerial ropeways constructed for the purposes referred to in section 28, whether constructed before or after the commencement of this Act:

Provided that, in the application of section 16 to any such aerial ropeway, for the words "the issue of an order under section 7" the words "the opening of the ropeway to traffic or the issue of a notification for the acquisition of, or an order for the temporary occupation of, land in accordance with the provisions of sub-section *(1)* of section 28, whichever is earlier," shall be deemed to be substituted.

(2) Clauses *(a)*, *(c)* and *(e)* of sub-section *(1)* and sub-section *(2)* of section 10 shall also apply to all such private aerial ropeways constructed after the commencement of this Act, and clause *(b)* of section 31 shall apply to such ropeways to the extent that section 10 applies thereto.

The Bengal Aerial Ropeways Act, 1923.

(Chapter V.—Supplementary Provisions.— Sections 41, 42.)

(*3*) The Local Government, on the application of the promoter or otherwise, may declare that the provisions of section 28 and of sub-section (*1*) of this section shall apply to any private aerial ropeway or class of private aerial ropeways for private traffic.

Power of Local Government to constitute an Advisory Board for aerial ropeways.

41. (*1*) The Local Government shall, by notification in the *Calcutta Gazette*, constitute an Advisory Board for aerial ropeways.

(*2*) Such Board shall consist of a Chairman to be appointed by the Local Government (who shall be a Chief Engineer to the Local Government) and two persons to be appointed by the Local Government as expert members.

(*3*) When any person is aggrieved by an order of the Local Government under section 7 or under section 21, such person, on payment of the prescribed fees, may, within thirty days of the said order, apply to the Local Government for revision of the same, and the Local Government shall take the advice of the Advisory Board in the prescribed manner and shall consider such advice and pass such orders in the matter as to the Local Government shall seem just and proper.

(*4*) With a view to enabling the Board to tender their advice under sub-section (*3*) the Board, with the consent of the Local Government and on payment of such further fees as may be prescribed, may make such further enquiry into the matter as the Board may consider to be necessary.

(*5*) The Local Government may, by general or special order,—

(*a*) define the further duties of, and regulate the procedure of, the Advisory Board,

(*b*) determine the tenure of office of the members of the Board; and

(*c*) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of such Board in the performance of his duty.

Power of Local Government to make rules.

42. (*1*) The Local Government may, after previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the conditions under which licenses for the construction of aerial ropeways over mining properties shall be granted, including conditions as to the assessment and payment of compensation for loss caused by the interruption of the getting of minerals by reason of such construction and conditions as to the removal of any portion of the ropeway to another alignment, to be fixed by arbitration if necessary, if at any time in the opinion of the Local Government the ropeway interferes with the raising of minerals;

The Bengal Aerial Ropeways Act, 1923.

(Chapter V.—Supplementary Provisions.—Section 42.)

(*b*) the powers of an Inspector appointed under section 11;

(*c*) the conditions under which and the manner in which the powers conferred on promoters by sub-section (*1*) of section 14 and sub-section (*1*) of section 15 may be exercised;

(*d*) the accidents of which notice shall be given to the Local Government and to the Inspector under clause (*c*) of section 20;

(*e*) the duties of the promoter's servants, police-officers, and Magistrates on the occurrence of an accident;

(*f*) the maximum and minimum rates which a promoter may fix under section 18;

(*g*) the standard dimensions and specifications with which the aerial ropeway is to conform;

(*h*) the procedure for the disposal of applications under sub-section (*2*) of section 21 to re-open an aerial ropeway or part thereof and the conditions under which such ropeway may be re-opened;

(*i*) the manner of previous publication of by-laws made under section 27;

(*j*) the intervals at which a promoter shall submit returns under section 36, and the forms in which such returns shall be submitted;

(*k*) the preparation, submission and auditing of the accounts of the promoter;

(*l*) the method of arbitration for the settlement of disputes;

(*m*) the manner in which notices under this Act shall be served;

(*n*) the manner in which, and the conditions under which, the through booking of goods may be permitted between an aerial ropeway and a railway, tramway or another aerial ropeway;

(*o*) the safe and efficient working of aerial ropeways;

(*p*) the fees to be charged to promoters and other persons in respect of licenses, applications, enquiries, inspection, and services rendered under this Act; and

(*q*) the procedure for filing, hearing and disposing of applications for revision under this Act, and the procedure for taking the advice of the Advisory Board

The Bengal Aerial Ropeways Act, 1923.

(Chapter V.—Supplementary Provisions.—Section 42.)

(3) All rules made under this section shall be published in the *Calcutta Gazette.*

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, SEPTEMBER 19, 1923.

PART III.

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No 2340L., dated Darjeeling, the 15th September, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the local Legislature of Bengal having been assented to by the Governor General on the 12th September, 1923, is hereby published for general information :—

BENGAL ACT XIII OF 1923.

THE CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT, 1923.

An Act for the suppression of Immoral Traffic in the town and suburbs of Calcutta and in the Port of Calcutta.

WHEREAS it is expedient to make better provision for the suppression of brothels, of the traffic in women and girls and for other purposes of a like nature in the town and suburbs of Calcutta and in the Port of Calcutta;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act; 5 & 6 Geo. 5, c. 61; 6 & 7 Geo. 5, c. 37; 9 & 10 Geo. 5, c. 101.

It is hereby enacted as follows:—

Short title, commencement and extent.

1. (1) This Act may be called the Calcutta Suppression of Immoral Traffic Act, 1923.

(2) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

(3) It extends to Calcutta as defined in section 2.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "brothel" means any house, room or place which the occupier or person in charge thereof habitually allows to be used by any other person for the purposes of prostitution;

(2) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908; Ben. Act IV of 1866. Ben. Act II of 1866. XV of 1908.

(3) "Commissioner of Police" means the Commissioner of Police for the town and suburbs of Calcutta;

(4) the words "public place" and "street" have the meanings assigned to them by section 3 of the Calcutta Police Act, 1866; Ben. Act IV of 1866.

(5) "prescribed" means prescribed by rules made under section 13.

Power to order discontinuance of house, etc., as brothel, etc.

3. (1) When the Commissioner of Police receives information that any house, room or place—

(a) is being used as a brothel or disorderly house, or for the purpose of carrying on the business of a common prostitute, in the vicinity of any educational institution or of any boarding house, hostel or mess used or occupied by students, or of any place of public worship or recreation, or

(*Section 3.*)

(*b*) is used as, or for the purpose, aforesaid to the annoyance of respectable inhabitants of the vicinity, or

(*c*) is used as, or for the purpose, aforesaid on any main thoroughfare which has been notified in this behalf by the Local Government on the recommendation of the Corporation of Calcutta, or

(*d*) is used as a common place of assignation,

he may cause a notice to be served on the owner, lessor, manager, lessee, tenant or occupier of the house, room or place or all of them, to appear before him, either in person or by agent, on a date to be fixed in such notice, and to show cause why, on the grounds to be stated in the notice, an order should not be made for the discontinuance of such use of such house, room or place.

(*2*) If, on the date fixed, or on any subsequent date to which the hearing may be adjourned, the Commissioner of Police is satisfied, after making such inquiry as he deems fit, that the house, room or place is used as described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*), as the case may be, he may direct, by order in writing on such owner, lessor, manager, lessee, tenant or occupier, that the use as so described of the house, room or place be discontinued from a date not less than fifteen days from the date of the said order and be not thereafter resumed.

(*3*) No house, room or place, concerning which an order has been made under sub-section (*2*), shall again be used, or be allowed to be used, in any manner described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*), as the case may be, and the Commissioner of Police, if he is satisfied, with or without further inquiry, that such house, room or place is again used in such manner, may, by order in writing on the owner, lessor, manager, lessee, tenant or occupier of such house, room or place, direct that the use as so described of such house, room or place be discontinued within a period of seven days and be not thereafter resumed.

(*4*) For the purposes of this section the decision of the Commissioner of Police that a house, room or place is used in any manner, or for any purpose, described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*) shall be final, and the legality or propriety thereof shall not be questioned in any trial or judicial proceeding in any Court.

(*5*) Whoever, after an order has been made by the Commissioner of Police under sub-section (*2*) or sub-section (*3*) in respect of any house, room or place, uses, or allows to be used, such house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to fifty rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to six months in addition to, or in lieu of, any fine imposed.

(*Sections 4-5.*)

(*6*) For the purpose of an inquiry under this section the Commissioner of Police may depute a Deputy Commissioner of Police to make a local investigation, and may take into consideration his report thereon.

(*7*) The Commissioner of Police shall maintain a register in which shall be entered a description of all houses, rooms and places in respect of which an order has been made under this section. Such register shall be open to inspection by the public on payment of the prescribed fee.

(*8*) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, in respect of which an order has been made on the lessee, tenant or occupier thereof directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on the business of a common prostitute, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

Removal and disposal of minor girls found in brothels, etc.

4. (*1*) The Commissioner of Police, or a Deputy Commissioner of Police, or a police-officer not below the rank of Inspector, specially authorised in writing in this behalf by the Commissioner or a Deputy Commissioner of Police, shall have power to enter into any brothel or disorderly house or house of assignation, in which he has knowledge or suspicion, or has reason to believe from a report made to him that a girl, apparently under the age of sixteen years, is living or is carrying on, or is being made to carry on, the business of a prostitute, and shall be entitled to remove such girl forthwith from such brothel, disorderly house or house of assignation.

(*2*) A girl who has been so removed shall be brought before a Juvenile Court constituted under section 37 of the Bengal Children Act, 1922, and the Court shall cause an inquiry to be made in the manner provided in sub-section (*3*) of section 27 of that Act and, if satisfied that the girl is under sixteen years of age and that she should be dealt with as hereinafter provided, may make an order that such girl be placed in suitable custody in the prescribed manner until she attains the age of eighteen years or for any shorter period. Ben. Act II 1922.

(*3*) For the determination whether a girl produced before a Court under the provisions of this section is under sixteen years of age, the provisions of section 38 of the Bengal Children Act, 1922, shall apply.

Intermediate custody of girl removed from brothels, etc.

5. When a girl has been removed from a brothel or disorderly house or house of assignation under the provisions of sub-section (*1*) of section 4, the Commissioner or Deputy Commissioner of Police or other police officer carrying out the removal shall, until such girl can be brought before the Court, and until the Court makes an order under sub-section (*2*) of section 4 or otherwise disposes of the case, cause her to be detained in such place (other than a police-station or jail) as may be prescribed in this behalf by the Local Government.

(*Sections 6—12.*)

Punishment for living on the earnings of prostitution.

6. (*1*) Any male person who knowingly lives, wholly or in part, on the earnings of prostitution shall be punished with imprisonment which may extend to three years, or with whipping, or with both of these punishments and shall also be liable to a fine which may extend to one thousand rupees.

(*2*) Where a male person is proved—

(*i*) to be living with, or to be habitually in the company of, a prostitute, or

(*ii*) to have exercised control, direction or influence over the movements of a prostitute,

in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, it shall be presumed, until the contrary is proved, that he is knowingly living on the earnings of prostitution.

Procuration.

7. Any person who induces a woman or girl to go from any place with intent that she may, for the purposes of prostitution, become the inmate of, or frequent, a brothel, shall be punished with imprisonment which may extend to three years, or (if a male) with whipping or (if a male) with both of these punishments, and shall also be liable to fine which may extend to one thousand rupees.

Punishment for importing woman or girl for prostitution.

8. Any person who brings or attempts to bring, or causes to be brought, into Calcutta any woman or girl with a view to her carrying on, or being brought up to carry on, the business of a prostitute, shall be punished with imprisonment which may extend to three years, or (if a male) with whipping, or (if a male) with both of these punishments and shall also be liable to fine which may extend to one thousand rupees.

Detention as prostitute or in brothels, etc.

9. Any person who detains any woman or girl against her will—

(*a*) in any house, room or place in which the business of a prostitute is carried on, or

(*b*) in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband,

shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees or with both.

Offences triable by Presidency Magistrates or First Class Magistrates.

10. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try offences punishable under sections 6, 7, 8 and 9.

Repeals.

11. Sections 43, 43A and 43B of the Calcutta Police Act, 1866, and sections 17, 17A and 17B of the Calcutta Suburban Police Act, 1866, are hereby repealed.

Ben. Act IV of 1866.
Ben. Act II of 1866.

Subsequent treatment of girl committed to suitable custody under sub-section (2) of section 4.

12. When an order that a girl be placed in suitable custody has been passed under sub-section (2) of section 4, the provisions of the Bengal Children Act, 1922, shall, subject to such modifications as the Local Government may prescribe by rules made under

Ben. Act II of 1922

(Section 13.)

section 13 and notwithstanding her age, thereafter apply to the case of such girl during the period of the said order, as if she had been a child or young person dealt with under section 28 of that Act.

Rules. **13.** The Local Government may make rules—

(*a*) prescribing the fee to be paid for inspection of the register maintained under sub-section (*7*) of section 3;

(*b*) for the care, treatment, instruction and maintenance of girls placed in suitable custody under sub-section (*2*) of section 4; and

(*c*) prescribing the places in which girls may be detained under the provisions of section 5.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2341L., dated Darjeeling, the 15th September, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the local Legislature of Bengal having been assented to by the Governor-General on the 12th September, 1923, is hereby published for general information :—

BENGAL ACT IX OF 1923.

THE CALCUTTA IMPROVEMENT (AMENDMENT) ACT, 1923.

An Act further to amend the Calcutta Improvement Act, 1911.

WHEREAS it is expedient further to amend the Calcutta Improvement Act, 1911, in the manner hereinafter appearing ; Ben. Act V of 1911.

And whereas the previous sanction of the Governor General has been obtained, under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act : 5 & 6, Geo V, c 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c 101.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Calcutta Improvement (Amendment) Act, 1923.

New section substituted for section 54 of Bengal Act V of 1911.

2. For section 54 of the Calcutta Improvement Act, 1911 (hereinafter referred to as the said Act), the following shall be substituted, namely :—

Transfer to Board, for purposes of improvement scheme, of building or land vested in the Corporation or in the Commissioners of a Municipality.

"54. (*1*) Whenever any building, or any street, square, or other land, or any part thereof, which—

(*a*) is situated in the Calcutta Municipality and is vested in the Corporation, or

(*b*) is situated in any part of any Municipality constituted under the Bengal Municipal Act, 1884, in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

is within the area of any improvement scheme and is required for the purposes of such scheme, the Board shall give notice accordingly to the Chairman of the Corporation or the Chairman of such Municipality, as the case may be, and such building, street, square, other land or part, shall thereupon vest in the Board subject in the case of any building or any land, not being a street or square, to the payment of compensation, if any, to the Corporation or to such Commissioners, as the case may be, under sub-section (*3*).

(*2*) Where any land vests in the Board under the provisions of sub-section (*1*) and the Board make a declaration to the Corporation that such land will be retained by the Board only until it revests in the Corporation as part of a street or an open space, under a declaration made by the Corporation under sub-section (*1*) of section 65 or a resolution passed by the Board under sub-section (*2*) of section 65, as the case may be, no compensation shall be payable by the Board to the Corporation in respect of that land.

(*3*) Where any land or building vests in the Board under sub-section (*1*) and no declaration is made by the Board that the land will be so retained, the Board shall pay to the Corporation, or to the

(*Sections 3, 4.*)

Commissioners, as the case may be, as compensation for the loss resulting from the transfer of such land or building to the Board, a sum equal to the market value of the said land or building at the time when the general declaration in respect of other lands included in the scheme is made under the provisions of section 6 of the Land Acquisition Act, 1894, as amended by this Act, and where any building, situated on land in respect of which a declaration has been made by the Board under sub-section (*2*), is vested in the Board under sub-section (*1*), like compensation shall be payable in respect of such building by the Board. I of 1894.

(*4*) If, in any case where the Board have made a declaration to the Corporation in respect of any land under sub-section (*2*), the Board retain or dispose of the land contrary to the terms of the declaration, so that the land does not revest in the Corporation as contemplated under such declaration, like compensation shall be payable by the Board to the Corporation in respect of such land for the loss resulting from the non-transfer of such land to the Corporation, such compensation not to be less than the market value which would have been payable for the said land under the provisions of sub-section (*3*).

(*5*) If any question of dispute arises—

(*a*) as to whether compensation is payable under sub-section (*3*) or sub-section (*4*), or

(*b*) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (*3*) or sub-section (*4*), or

(*c*) as to whether any building or street, or square or other land, or any part thereof is required for the purposes of the scheme,

the matter shall be referred to the Local Government, whose decision shall be final."

Amendment of section 78.

3. (*1*) In clause (*ii*) of sub-section (*4*) and in sub-section (*8*) of section 78 of the said Act, for the words "four *per cent.*" the words "six *per cent.*" shall be substituted ; and

(*2*) to that section the following shall be added, namely :—

"(*10*) Notwithstanding anything contained in clause (*ii*) of sub-section (*4*) or in sub-section (*8*) the rate of interest payable, under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, four *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (*3*) before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and the agreement in respect of the payment of the same is executed before, on or within two months after, that date."

Amendment of section 79.

4. In section 79 of the said Act for the words "four *per cent.*" the words "six *per cent.*" shall be substituted.

C. TINDALL,

Secretary to the Government of Bengal and

Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2347L., dated Darjeeling, the 17th September, 1923.—In pursuance of the provisions of sub-section (3) of section 81 of the Government of India Act, the following Act of the local Legislature of Bengal having been assented to by the Governor General on the 13th September, 1923, is hereby published for general information :—

BENGAL ACT XI OF 1923.

THE CALCUTTA MUNICIPAL (No. II) ACT, 1923.

An Act to provide for certain matters in connection with the Budget Estimate of the Corporation of Calcutta for the year 1924-25, the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and the arrangements to be made in connection with the raising of loans during that year, for the fixing of the percentage of the consolidated rate in respect of the added areas during the four succeeding years, and for the amendment of section 20 of the Calcutta Municipal Act, 1923, in respect of the qualification of electors.

Preamble.

WHEREAS it is expedient to give to representatives of the Commissioners of the municipalities which are to be included in Calcutta, under the provisions of the Calcutta Municipal Act, 1923, an opportunity of taking part in the framing and passing of the Budget Estimate of the Corporation of Calcutta for the year 1924-25, in the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and in the arrangements that are to be made for the raising of any loan during that year, and so to provide for the framing and passing of the said Budget Estimate, the fixing of the said rate and the arrangements for the said loans; (Ben. Act III of 1923.)

And whereas it is expedient that the Corporation do fix for the year 1924-25 a favourable percentage in respect of the levy of the consolidated rate on lands and buildings in each of the areas added to Calcutta by the Calcutta Municipal Act, 1923, and that they have power to fix a special percentage in respect of the lands and buildings in any such areas during the four succeeding years;

And whereas it is expedient to amend section 20 of the said Act in respect of the minimum amount to be paid by a person as consolidated rate, tax or rent so as to entitle him to be an elector;

It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Calcutta Municipal (No. II) Act, 1923.

(*2*) It extends to Calcutta as defined in clause (*11*) of section 3 of the Calcutta Municipal Act, 1923.

Manner of preparation and passing of Budget Estimate of the Calcutta Corporation for 1924-25, etc.

2. Notwithstanding anything contained in the Calcutta Municipal Act, 1899, or in the Calcutta Municipal Act, 1923, the Budget Estimate of the Corporation of Calcutta for the year 1924-25 for the purposes of the Calcutta Municipal Act, 1923, shall be prepared and passed, and the rates at which the consolidated rate and the taxes for the said year for the said purposes shall be levied and imposed shall be determined and fixed, and the sums of money, if any, that (Ben. Act III of 1899.)

(*Section 3.*)

shall be borrowed in the said year for the said purposes shall be determined, in the manner set forth in sections 3 to 5.

Preparation of Budget Estimate and reference to General Committee.

3. (*1*) The Budget Estimate of income and expenditure for the year 1924-25 of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, shall be prepared, with reference to the area specified in Schedule I to that Act and for the purposes of that Act, by the Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and the said Chairman shall, on or before the tenth day of January, 1924, place the same, together with a statement of proposals as to the taxation which it will, in his opinion, be necessary or expedient to impose under the Calcutta Municipal Act, 1923, in the year 1924-25, before the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, at a special meeting convened for the purpose, and the Corporation of Calcutta, as so constituted, shall forthwith refer the said Budget Estimate and proposals for consideration to a Special Committee which shall consist of the following members:—

Ben. Act III of 1923

Ben. Act III of 1899.

(*i*) the Chairman of the Calcutta Corporation;

(*ii*) nine Commissioners of the Calcutta Corporation to be elected by the Corporation at the said special meeting from among the ward Commissioners;

(*iii*) four Commissioners of the Calcutta Corporation to be elected by the Corporation at the said special meeting from among the appointed Commissioners;

(*iv*) four Commissioners of the Cossipore-Chitpur Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924;

(*v*) three Commissioners of the Maniktala Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924; and

(*vi*) two Commissioners of the Garden Reach Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924:

Provided that, if the Commissioners of any of the municipalities referred to in clauses (*iv*), (*v*) and (*vi*) fail to elect the full number of members to be elected by them by the first day of January, 1924, the Local Government shall nominate a sufficient number of persons to complete the said number and such persons shall be deemed to be members duly elected by the said Commissioners.

(*2*) The names of the members of the Special Committee shall be published in the *Calcutta Gazette*.

(*Section 4.*)

(*3*) The Chairman of the Calcutta Corporation shall be Chairman of the Special Committee, and the procedure of the Special Committee shall be in accordance with the rules made for the business of Standing Committees of the Corporation of Calcutta.

(*4*) The Special Committee, as so constituted, shall, on or as soon as may be after the tenth day of February, 1924, consider the estimates and proposals submitted by the Chairman of the Corporation and subject to such modifications and additions therein or thereto as they may think fit to make, shall prepare a Budget Estimate of income and expenditure of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, for the year 1924-25, and shall propose the levy of the consolidated rate and other taxes for that year at such rates as they may deem necessary.

Ben. Act III of 1923.

Passing of Budget Estimate, etc.

4. (*1*) The Budget Estimate, as finally framed by the said Special Committee, together with a statement of proposals as to the taxation which it will, in the opinion of the Special Committee, be necessary or expedient to impose under this Act in the year 1924-25, shall be placed before the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, on or before the seventh day of March, 1924, and the said Corporation shall consider, on behalf of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, the said proposals of the Special Committee, and in so doing shall apply thereto the provisions of the Calcutta Municipal Act, 1923, so far as in their opinion these can be suitably applied, and shall, on or before the twenty-second day of March, 1924, pass the same Budget Estimate, subject to such further modifications or additions as to them shall appear to be expedient, and shall fix, with reference to the Budget Estimate as so passed, the rates at which the consolidated rate and the taxes mentioned in the Calcutta Municipal Act, 1923, shall be levied and imposed for the year commencing on the first day of April, 1924, and the sums of money (if any) which shall be borrowed during the said year for the purposes of the Calcutta Municipal Act, 1923:

Ben. Act III of 1899.

Provided that, notwithstanding anything contained in the Calcutta Municipal Act, 1923, the total amount by way of—

(*i*) the rate on holdings,

(*ii*) the lighting rate (if any),

(*iii*) the water rate (if any), and

(*iv*) the latrine fees (if any),

assessed and leviable under the Bengal Municipal Act, 1884, for the year ending the 31st March, 1924, in respect of any holding in any of the areas added to Calcutta by the Calcutta Municipal Act, 1923, shall be deemed to be the consolidated rate leviable under the provisions of the Calcutta Municipal Act, 1923, in respect of lands and buildings included in such holding for the year 1924-25 for all the purposes of that Act:

Ben. Act III of 1884

Provided also that if any new building, as defined in the Calcutta Municipal Act, 1923, is erected during

(*Section 5.*)

the year 1924-25 on any premises in any of the said areas, the Executive Officer may cause such building to be valued, and the consolidated rate on the premises shall be levied at the rate, fixed for that year for the purpose of the levy of the consolidated rate on lands and buildings in Calcutta generally. The valuation so made shall remain in force until the next general re-valuation of the ward under the provisions of the Calcutta Municipal Act, 1923. Ben. Act III of 1923.

(*2*) For the purposes of this section, notwithstanding anything contained in the Calcutta Municipal Act, 1899, the Corporation of Calcutta shall be deemed to include the additional members referred to in clauses (*iv*), (*v*) and (*vi*) of sub-section (*1*) of section 3. Ben. Act III of 1899

(*3*) If the Special Committee fail to submit to the Corporation of Calcutta by the seventh day of March, 1924, the Budget Estimate and proposals referred to in sub-section (*4*) of section 3, the Budget Estimate and proposals of the Chairman referred to in sub-section (*1*) of that section shall be deemed to be the Budget Estimate and proposals of the Special Committee finally framed and duly made in accordance with this Act and the Corporation shall consider them accordingly. If the Corporation of Calcutta fail to consider and to pass by the twenty-second day of March, 1924, the Budget Estimate of the Special Committee, the Budget Estimate and proposals of the Special Committee shall be deemed to be the Budget Estimate and proposals of the Corporation of Calcutta duly made and passed under the provisions of this Act.

Validity of Budget Estimate for 1924-25, etc.

5. The Budget Estimate of the Corporation of Calcutta for the year 1924-25, as so passed, and the rates at which the consolidated rate and taxes shall be levied and imposed, as so determined and fixed, and the decision of the Corporation in respect of any loan or loans to be raised, shall, notwithstanding anything contained in the Calcutta Municipal Act, 1923, have for all the purposes of that Act full force and effect in Calcutta as defined in clause (*11*) of section 3 of that Act during the year 1924-25 and—

(*i*) the said Budget Estimate shall be deemed to be the Budget Estimate duly passed,

(*ii*) the consolidated rate and taxes levied and imposed at the rates so determined and fixed shall be deemed to be the consolidated rate and taxes duly levied and imposed, and

(*iii*) the loans, if any, incurred in accordance with the said decision shall be deemed to be loans duly incurred,

by the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1923, unless and until such Budget Estimate, consolidated rate and taxes and decision in regard to loans are added to, modified or varied by that Corporation and in accordance with the provisions of that Act.

(*Sections 6-8.*)

Power to Chairman to inspect and take extracts from documents.

6. The Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and any officer of the said Corporation specially empowered by him in this behalf shall from the commencement of this Act and notwithstanding anything contained in the Bengal Municipal Act, 1884, have power to inspect and take extracts from the assessment books and other records of the Maniktala, Cossipore-Chitpur, Garden Reach and Tollygunge Municipalities for all or any of the purposes of this Act and of the Calcutta Municipal Act, 1923, and the Commissioners of the said municipalities shall render to the said Chairman and to any such officer all assistance that he may require for the said purposes.

Ben Act III of 1899

Ben Act III of 1884

Ben Act III of 1923

Power to Corporation to fix lower percentage rate for the consolidated rate in respect of lands and buildings in added areas during the years 1925-26 to 1928-29

7. Notwithstanding anything contained in the Calcutta Municipal Act, 1923, the Corporation, in fixing the rate at which the consolidated rate for any of the years 1925-26, 1926-27, 1927-28 or 1928-29 on lands and buildings in Calcutta generally shall be levied and imposed, may fix, in respect of the lands and buildings in any of the several areas referred to in sub-clauses (*i*) to (*v*) of clause (*1*) of section 3 of that Act, a rate at a lower percentage on the annual valuation than the percentage which is fixed for that year generally in respect of lands and buildings in Calcutta.

Amendment of section 20 of the Calcutta Municipal Act, 1923

8. In section 20 of the Calcutta Municipal Act, 1923,—

(*a*) in sub-clause (*a*)—

(*i*) after the word "being", in the three places where it occurs, the words "or having been" shall be inserted;

(*ii*) the first proviso shall be omitted;

(*iii*) for the second proviso the following shall be substituted, namely:—

"Provided that such payment has been made during and in respect of the year (or any portion of the year) last preceding the year in which the election is held."

(*b*) for sub-clause (*b*) the following shall be substituted, namely:—

"(*b*) being or having been the occupier of any premises valued for assessment purposes under this Act or, in the case of the first general election held under this Act, under the Calcutta Municipal Act, 1899, or of a portion of any such premises has, at any time during the year last preceding the year in which the election is held, paid rent for such occupancy for at least six months during the said year at a rate not less than twenty-five rupees per mensem, and has on application to the Executive Officer had his name entered in a Register to be maintained for the purpose:

Provided that the application to the Executive Officer shall be made not later than the 30th September immediately preceding the election or such other date as the Executive Officer may notify in this behalf; or"

(*Section 9.*)

(*c*) for sub-clause (*c*) the following shall be substituted, namely :—

"(*c*) being or having been, for not less than six consecutive months during the year last preceding the year in which the election is held, the owner of a hut in a *bustee* valued for assessment purposes under Chapter X, or, in the case of the first general election held under this Act, under the corresponding Chapter of the Calcutta Municipal Act, 1899, and on account of which a sum of not less than twelve rupees has been paid during the said year in respect of the consolidated rate, has on application to the Executive Officer had his name entered in a Register to be maintained for the purpose:

Provided that the application to the Executive Officer shall be made not later than the 30th September immediately preceding the election or such other date as the Executive Officer may notify in this behalf."

Power to remove difficulties

9. If any difficulty arises in assessing and levying a consolidated rate for the year 1924-25 in respect of any of the lands, or of the lands and buildings, in the areas added to Calcutta by the Calcutta Municipal Act, 1923, the Local Government, on the recommendation of the Corporation, may make such order as to them shall appear to be necessary in order to enable the Corporation to assess and levy a consolidated rate for that year in respect of such land or such land and building. Ben. Act III of 1923.

Any such order may modify the provisions of this Act and of the Calcutta Municipal Act, 1923, so far as to the Local Government shall appear to be necessary for carrying the order into effect.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 2360L., dated Darjeeling, the 18th September, 1923.—In pursuance of the provisions of sub-section (3) of section 81 of the Government of India Act, the following Act of the local Legislature of Bengal having been assented to by the Governor General on the 14th September, 1923, is hereby published for general information :—

BENGAL ACT X OF 1923.

THE BENGAL TENANCY (UTBANDI AMENDMENT) ACT, 1923.

An Act to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be determined for utbandi lands and to make further provision in respect of such lands.

Preamble.

WHEREAS it is expedient to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be determined for land held under the custom of *utbandi* or under any form of tenancy locally known as *utbandi*, and to make such other provisions as hereinafter appear in respect of lands for which a uniform annual money rent has been so determined ; VIII of 1885.

And whereas the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act ; 5 & 6 Geo. V., c. 61; 6 & 7 Geo. V., c. 37; 9 & 10 Geo. V., c. 101.

It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Bengal Tenancy (Utbandi Amendment) Act, 1923.

(2) It extends in the first instance only to the districts of Nadia, Murshidabad and Jessore, but the Local Government may, by notification in the *Calcutta Gazette*, extend it to any other district or part of a district in Bengal.

Insertion of new sections 180A, 180B and 180C in Act VIII of 1885.

2. After section 180 of the Bengal Tenancy Act, 1885, the following sections shall be inserted, namely :—

"180A. (1) Notwithstanding anything contained in section 180, when a raiyat who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi* would have been, a settled raiyat of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land (hereinafter referred to as *utbandi* land), either the landlord or the raiyat may apply to have a uniform annual money rent determined for the land.

Fixing of uniform annual money rent in respect of *utbandi* lands.

(2) The application shall include at the discretion of the applicant either—

(*a*) all *utbandi* lands held in the same village by the same raiyat under the same landlord in which the raiyat has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(*Section 2.*)

(*b*) all the lands held in the same village under the same landlord by the raiyat which the raiyat, or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy rights therein, or

(*c*) both.

(*3*) Subject to the provisions of sub-section (*2*), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more raiyats und r him and a joint application may be made by two or more raiyats in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(*4*) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Local Government.

(*5*) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (*4*) to receive applications.

(*6*) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.
If the immediate landlord of the raiyat is a temporary tenure-holder or *ijaradar* the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(*7*) If the application is made in respect of lands in which the raiyat has not acquired occupancy rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(*Section 2.*)

(*8*) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the raiyat has not acquired occupancy rights, a premium to be paid to the landlord, and he shall order that the raiyat shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any:

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (*1*) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(*9*) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent:

Provided that the officer may also take into consideration—

(*a*) the average money rent payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average rates for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands;

(*c*) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise;

(*Section 2.*)

(*d*) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the *utbandi* lands and the arrangements made for continuing those charges;

(*e*) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy raiyats;

(*f*) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(*10*) The premium to be paid to the landlord in the case of lands in which the raiyat has not acquired occupancy rights shall be three times the rent, or, if the application is made under clause (*c*) of sub-section (*2*), three times the portion of the rent determined under sub-section (*8*) on account of such lands.

(*11*) If the immediate landlord of the raiyat is a temporary tenure-holder or *ijaradar* the officer shall apportion the premium payable under sub-section (*10*) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor in interest as an arrear of rent but shall not be recoverable by the superior landlord from the raiyat.

(*12*) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(*13*) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the raiyat, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (*8*) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(*Section 2.*)

(*14*) The premium or any instalment thereof shall be recoverable as rent and if the premium or any instalment thereof is not paid by the date fixed under sub-section (*13*) for the payment of such premium or instalment the landlord may make a requisition to the Collector for the recovery of the arrear of the same in the manner set forth in sub-sections (*3*) and (*4*) of section 158A, and the provisions of sub-sections (*5*) to (*9*) of that section shall apply to the recovery of the said arrear by the Collector as if it were an arrear of rent, recoverable by him under the provisions of that section.

Interest shall not be payable on any instalment in respect of which default has not been made.

The Local Government may make rules prescribing the form of requisition to be made by a landlord under this sub-section and for carrying into effect the purposes of this sub-section.

(*15*) Any order made under this section shall be subject to appeal in the manner provided in section 109A, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(*16*) An application made under sub-section (*1*) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (*7*) or sub-section (*8*) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (*2*) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(*17*) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

"180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy raiyat from the date of the order.

(Section 2.)

Period for which rent fixed under section 180A to remain unaltered.

180C. (*1*) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (*a*) of sub-section (*1*) of section 38.

(*2*) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (*12*) of section 180A."

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2361L., dated Darjeeling, the 18th September, 1923.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the local Legislature of Bengal having been assented to by the Governor General on the 14th September, 1923, is hereby published for general information:—

BENGAL ACT XII OF 1923.

THE ST. THOMAS' SCHOOL ACT, 1923.

An Act to provide for the management and future location of St. Thomas' School and for the making over of certain land for the compound of St. Thomas' Church in Calcutta to certain ecclesiastical authorities.

Preamble.

WHEREAS it is expedient, in order to place the affairs of St. Thomas' School in Calcutta (hitherto known as the Calcutta Free School) on a legal and stable basis, to provide for the management and future location of the said school and for the making over of certain land for the compound of St. Thomas' Church in Calcutta to certain ecclesiastical authorities;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the St. Thomas' School Act, 1923.

(*2*) This section and section 2 shall come into force at once, and the remainder of the provisions of this Act shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

CONSTITUTION.

Constitution of the Governors.

2. (*1*) The Governors of St. Thomas' School (hereinafter referred to as the Governors) shall be—

(*a*) the Lord Bishop of Calcutta;

(*b*) the Archdeacon of Calcutta;

(*c*) the Master of the Calcutta Trades Association for the time being;

(*d*) one person of either sex to be nominated by the Bengal Chamber of Commerce;

(*e*) one person of either sex to be nominated by the Anglo-Indian and Domiciled European Association of Bengal;

(*f*) one European or Anglo-Indian Commissioner of the Corporation of Calcutta to be nominated by the Corporation; and

(*Sections 3-5.*)

(*g*) the following persons, of either sex, being members of the Church of England, namely :—

(*i*) one person to be nominated by the Governor General of India ;

(*ii*) two persons to be nominated by the Governor of Fort William in Bengal ;

(*iii*) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta ;

(*iv*) two persons to be nominated by the vestry of St. John's Church, Calcutta ; and

(*v*) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore.

(*2*) The Governors may at a meeting co-opt with themselves such persons, of either sex, not exceeding three in number, as they may consider necessary. Such persons shall be deemed to be Governors for the purposes of this Act.

(*3*) If any of the bodies referred to in clauses (*d*), (*e*) and (*f*) and sub-clauses (*iii*) to (*v*) of clause (*g*) of sub-section (*1*) does not by such date as may be prescribed by the Local Government nominate the Governors mentioned therein, the Local Government shall nominate qualified persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

(*4*) The names of the nominated and co-opted Governors shall be published in the *Calcutta Gazette*.

Incorporation of the Governors.

3. The Governors shall be a body corporate by the name of the "Governors of St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Period of office of the Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the *Calcutta Gazette*:

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the *Calcutta Gazette*:

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

Quorum.

5. (*1*) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

(*2*) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

(*Sections 6-9.*)

Power to appoint new Governors.

6. If a nominated or co-opted Governor—

(*a*) dies, or

(*b*) is absent from the meetings of the Governors for more than six consecutive months, or

(*c*) desires to be discharged, or

(*d*) refuses to act or becomes incapable of acting, the authority which nominated or co-opted him may in cases (*b*) to (*d*) declare his post to be vacant and may in cases (*a*) to (*d*) nominate or co-opt, as the case may be, a new Governor to fill such vacancy for the unexpired remainder of the term for which such Governor would otherwise have continued in office.

MANAGEMENT AND PROPERTY OF ST. THOMAS' SCHOOL.

Change in the name of the school and vacation of office by existing Governors

7. From the date when this section comes into operation—

(*i*) the Calcutta Free School shall be known as St. Thomas' School, and

(*ii*) the term of office of all persons then acting as Governors of the school shall cease and the St. Thomas' School Society shall cease to have any connection with the management of the school.

Property to vest in the Governors

8. (*1*) All property, movable or immovable, which at the date when this section comes into operation appertains to the Calcutta Free School or is held by or on behalf of the persons then acting as Governors of the school or by the St. Thomas' School Society for the purposes of the school (including the premises specified in the First Schedule) shall, together with any property movable or immovable which may thereafter be given, bequeathed, transferred or acquired for the purposes mentioned in section 11, vest as and from such date in the Governors of St. Thomas' School as constituted by section 3 for the purposes of the school:

Provided that the Governors shall apply any funds which up to that date have been held in trust for specific purposes in connection with the school including the funds set forth in the Second Schedule, and any funds which may thereafter be so held, to the purposes for which they are held in trust.

(*2*) All liabilities which at the said date have been incurred by the persons then or theretofore acting as Governors or by the St. Thomas' School Society for the purposes of the school shall be deemed to be, and are hereby declared thereafter to be, liabilities of the Governors of St. Thomas' School as constituted by section 3.

Powers to Governors to remove school from present site and dispose of that site.

9. The Governors are hereby authorised to carry out the removal of the school from the site in Free School Street where it is in part located, to such other site or sites as the Governors may, with the sanction of the Local Government, determine and the Governors are hereby empowered in that behalf to sell, lease, mortgage, or otherwise dispose of the present premises in Free School Street and the site thereof and to acquire by purchase or otherwise a suitable site or sites and to erect buildings for the purposes of the school as the Governors may, with the sanction of the Local Government, determine.

(*Sections 10-14.*)

Power to Governors to delegate their powers and to appoint teachers and officers.

10. The Governors shall have power from time to time—

(*a*) to delegate, subject to such conditions as they think fit, any of their powers to sub-committees consisting of such Governors as they shall think fit;

(*b*) to appoint a Secretary and to fix his remuneration, if any; and

(*c*) to appoint such persons as they shall think fit to employ for the purposes of the school (including school-teachers, boarding-masters, matrons, sergeants, clerks, officers and servants) and to fix their remuneration.

Purposes of St. Thomas' School.

11. The purposes of St. Thomas' School are hereby declared to be as follows and, save as is otherwise herein provided, all property vested in the Governors by or under this Act shall be deemed to be held in trust for the said purposes and not otherwise:—

(*1*) the maintenance of an efficient school, and

(*2*) the provision of a sound education, with religious instruction in accordance with the principles of the Church of England, for the children of Europeans and Anglo-Indians:

Provided that in the interpretation of the terms "European" and "Anglo-Indian" the Governors shall have due regard to any definition of those terms which may be included in the Code of Regulations for European Schools.

Act not to preclude Governors from conforming to regulations of Local Government.

12. The Governors shall not be precluded by any provision in this Act from conforming to any regulations which the Local Government may impose as the conditions of a grant of money to the school.

MAKING OVER OF LAND FOR THE COMPOUND OF ST. THOMAS' CHURCH.

Compound of St. Thomas' Church.

13. (*1*) The Governors are further authorised in such manner as they deem fit to make over to, and to vest in, the Lord Bishop of Calcutta and the Archdeacon of Calcutta conjointly such land (the property of the Governors), adjacent to St. Thomas' Church and not exceeding, when taken together with the land consecrated with the St. Thomas' Church building, two bighas in all, as they may deem to be necessary for the convenient user of that Church for the purposes of the Church of England.

(*2*) The boundaries of such land shall be delineated on the ground and approved by the Local Government before action is taken by the Governors under sub-section (*1*).

PROVIDENT FUND.

Power to Governors to establish a provident fund or funds.

14. The Governors may, with the approval of the Local Government, establish a provident fund or provident funds for the benefit of their teachers, other officers or servants (appointed in accordance with the provisions of this Act) and may compel all or any of such teachers, officers and servants to contribute to, and may make supplementary contributions to, such provident fund or funds and make payments thereout in accordance with the rules of such fund or funds.

(*Section 15.*)

RULES.

Power to Governors to make rules.

15. The Governors may from time to time make rules for any of the following purposes, namely :—

(*a*) for their own guidance and for the conduct of their business;

(*b*) to determine the persons by whom orders for payment of money, contracts, transfers and other documents may be signed on behalf of the Governors ;

(*c*) for the management and control of the school in all its departments, including any hostel that may be established in connection with the school;

(*d*) regulating the proceedings of sub-committees;

(*e*) prescribing the rates and the conditions under which contributions may be paid by the Governors and their officers, teachers and servants to the provident fund or funds which may be established under section 14, and determining the conditions of payments from such fund or funds.

(The First and Second Schedules.)

THE FIRST SCHEDULE.

(*See* section 8.)

(1) With the exception of the St. Thomas' Church building and the land consecrated therewith, measuring one hundred and eighteen feet by fifty-nine feet, the site with buildings thereon known as the Calcutta Free School, situated at 58, Free School Street, 28, Marquis Street, and 6, Marquis Lane, Calcutta, measuring about thirty-one bighas, and bounded as follows:—

> "On the north by pucca houses, a small Church known as St. Joseph's (Madrasi) Chapel and Market Street; on the south by a house and Marquis Street; on the east by a house and Collin Street (formerly called Collinga Bazar Street); and on the west by Free School Street."

(2) The leasehold of the land and buildings, known as Kidderpore House, situated on 4, Diamond Harbour Road, in Kidderpore in the district of the 24-Parganas, containing an area of twenty-one decimal nought four acres or thereabouts, and bounded as follows:—

> "On the north by St. Stephen's Church compound and Government land of the Cattle Market, on the north-east corner by the Orphangunge Road; on the east by the premises of the Zoological Gardens and the Meteorological Observatory compound; on the south by the land of the lines of the Governor's Body Guard; and on the west by the compound of St. Stephen's Parsonage and Diamond Harbour Road."

THE SECOND SCHEDULE.

(*See* section 8.)

LIST OF FUNDS.

1. Provident Fund.
2. Retiring Allowance Fund.
3. Apprentice Fund.
4. Thompson "Rex Ludorum" Fund.
5. Samuel Benjamin Taylor Fund.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, JANUARY 10, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

REVENUE DEPARTMENT.

Land Revenue Branch.

CALCUTTA, THE 3RD JANUARY 1923.

RESOLUTION—No. 90L.R.

READ—

(1) Resolution on 7383L.R., dated the 20th August 1921.

ON the 7th July 1921, a Resolution was passed by the Bengal Legislative Council recommending to Government that a Committee should be appointed consisting of officials and non-officials to consider and report what amendments are needed in the Bengal Tenancy Act, and on the 20th August 1921, orders were issued by the Governor in Council appointing the Committee. Their full report, which consists of the main report, a draft Bill, the notes on the clauses of that Bill and several minutes of dissent, was received by Government on the 23rd December 1922. The Committee have devoted themselves to the consideration of the many difficult problems with which they were confronted in a very thorough manner and have given a clear and concise exposition of these problems. His Excellency in Council has now therefore much pleasure in thanking His Excellency the Hon'ble Sir John Kerr, K.C.S.I., K.C.I.E., the President of the Committee, and the Members of the Committee, for their valuable advice and for the report.

The Committee recommend that the report should be circulated for the purpose of obtaining opinion thereon before a Bill is introduced in the Legislative Council. In view of the intricacy and importance of the proposed legislation the Governor in Council accepts this recommendation and directs that the full report be published in the *Calcutta Gazette* for information and criticism. All opinions thereon should reach Government before the 1st May 1923.

By order of the Governor in Council,

M. C. McALPIN,

Secretary to the Government of Bengal.

REPORT OF THE COMMITTEE APPOINTED TO CONSIDER THE AMENDMENT OF THE BENGAL TENANCY ACT.

IN a Resolution passed on the 7th July, 1921, the Bengal Legislative Council recommended the Government to appoint a Committee consisting of officials and non-officials to consider and report what amendments are needed in the Bengal Tenancy Act. Orders appointing our Committee were issued in Government Resolution No. 7383 L.R., dated the 30th August, 1921.

2. Our task has proved heavy and onerous. The Bengal Tenancy Act was passed in 1885, and the discussions which led up to it are now nearly forty years old. During the last generation great changes have occurred in the economic and agrarian conditions of Bengal. There has been a vast amount of litigation and some conflict of judicial decisions in regard to many of the fundamental provisions of the Act. Moreover, during the last twenty years, a cadastral survey has been made and a record-of-rights prepared for an area covering nearly two-thirds of the Presidency as now constituted, and these operations have brought to light many defects in the working of the Act and have indicated that it is in many respects unsuited to modern conditions. It is no wonder, therefore, that there has, for some time past, been a growing conviction in the minds of the Government and of the public that a radical revision of the Act is required. It has been our task to undertake that revision. We have held no less than 43 meetings during the last year, and have discussed in detail practically all the important sections of the Act. We have not been able to reach complete unanimity in our conclusions, and, in a matter affecting such diverse and complicated interests, unanimity is hardly to be expected. We are, however, agreed on most of the broad principles, which should govern a revision of the Act, and, where we differ as to the details arising out of the application of these principles, we have endeavoured to indicate the various considerations on either side, with the object of lightening the labours of the Government and of the Legislature, with whom the ultimate decision must rest.

3. We desire to make it clear at the outset that the difficulties of the problem are not due in any considerable measure to the existence in Bengal of disturbed agrarian relations or of bad feeling between landlord and tenant. Such questions, which were so prominent in the discussions of earlier tenancy legislation, are now relatively unimportant, but, while our task has been lightened by the absence of unpleasant and unprofitable controversy, it has been sufficiently formidable in other respects. The main defect of the Bengal Tenancy Act at the present day is that it does not provide adequately for the extraordinarily complicated state of agrarian relations which has grown up owing to the widespread adoption both by landlords and by tenants of the practice of subdivision and subinfeudation of rights in land. The most difficult part of our labours has been to adapt the law to meet this state of things. We are conscious that our proposals may be criticised on the ground that they will make the law unduly complicated, but the situation with which we have had to deal is complicated in the extreme, and there is no way of meeting it which is not complicated, short of forbidding subinfeudation and subdivision of tenures and holdings altogether—a measure which it would be impracticable to enforce without wholesale disturbance of existing rights.

4. The essential feature of tenancy legislation in Bengal has always been the recognition of a right of occupancy in certain classes of tenants, that is, broadly speaking, a heritable right to hold land subject to the payment of rent, accompanied by protection from ejectment so long as the conditions of the tenancy are fulfilled. The regulations passed in connection with, and subsequent to, the Permanent Settlement recognised the existence of this right in the resident raiyats of the village, who were generally known as

khud kasht or *kadimi*. On the other hand, new comers were required to take settlement of lands on the terms imposed by the landlord and might be merely tenants-at-will. The old regulations contained no indication as to the length of time required for the establishment of *kadimi* rights, and no legal definition of the classes of tenants entitled to occupancy rights was attempted until 1859. In Act X of that year, every raiyat who had cultivated or held land for twelve years was declared to have a right of occupancy in that land, so long as he paid the rent payable on account of the same. But this rule did not apply to proprietor's private land let out on lease for a term of years, or year by year, and the accrual of occupancy rights in any land could also be barred by a written contract. In the twenty-six years which followed the passing of the Act of 1859, these provisions were strongly assailed. It was urged that to make the accrual of occupancy rights dependant on twelve years' cultivation of a particular piece of land and to allow such accrual to be barred by a written contract was a serious infringement of the customary rights of the resident raiyats of the country. On the other hand, it was argued that the effect of the twelve years' rule was to confer rights of occupancy on a large class who were previously mere tenants-at-will. The whole question was reviewed by the Rent Commission, which drew up the first draft of what eventually became the Tenancy Act of 1885. In the end, they made an important modification of the twelve years' rule. It was laid down that every person who for a period of twelve years has continuously held as a raiyat land situate in any village shall be deemed to have become at the end of that period a settled raiyat of the village, and that every settled raiyat of a village shall have a right of occupancy in all lands for the time being held by him as a raiyat in that village. As in the Act of 1859, the accrual of occupancy rights can be barred in proprietor's private land let out for a term of years or from year to year.

5. The principle of the settled raiyat adopted by the framers of the Bengal Tenancy Act has been generally accepted as a satisfactory recognition of the customary rights of the resident raiyats of a village as introduced in the old regulations. It affords almost a complete solution of the status problem in areas where conditions are simple and there are only two persons interested in the land, namely, the proprietor landlord and the cultivating tenant. But in Bengal, at the present day, conditions are rarely so simple as this. There is often a whole chain of persons interested in the land, both as rent-receivers and as rent-payers, between the proprietor at the top and the cultivating tenant. Under the law as it stands, the occupancy tenant right can only be enjoyed by one person in the chain, and, as the law is not properly adapted to the complicated state of subinfeudation which actually exists, it frequently happens that the occupancy tenant right gets into the hands of the wrong person, and the cultivating tenant who ought to have the right finds himself in the position of a tenant-at-will. It is this limitation of the legal occupancy right to a single individual among the numerous persons who may be interested in the land that is at the root of most of the difficulties experienced in the administration and interpretation of the Act in Bengal, and we are convinced that it is necessary to recast this fundamental provision of the Act, in order to meet the requirements of modern conditions. The problem is beset with difficulties, and no solution that we have considered is entirely free from risks and objections, but it is, in our opinion, essential to tackle the problem and to adopt some solution which, even though it may not be ideal, will be better suited to present day conditions than the existing law.

6. The principle which we put forward for consideration is based on the fact that, although the law confers the occupancy tenant right on only one person, yet as a matter of custom and practice the essentials of the occupancy right are ordinarily enjoyed by most of the persons in the chain of those who are interested in the land as rent-receivers or as rent-payers or as both. There are variations for different classes in regard to such matters as the limitations on enhancement and the methods of settlement of rent, the right of transfer and so on, but such matters are merely

incidental and are not essential to what we may call briefly the occupancy status, meaning thereby a heritable right to hold land subject to the payment of the rent legally payable for the time being. This is the essential element of a permanent tenure, which is defined in the present Act as a tenure which is heritable and not held for a limited time, and most tenures in Bengal other than those held under leases for limited periods fall within this definition. The same essential element attaches under the existing Act to all raiyati holdings other than those of non-occupancy raiyats and under-raiyats, and even in the case of under-raiyats the possibility of the acquisition of a right of occupancy by custom is recognised in section 183, though the precise incidents of such a right in the case of under-raiyats are nowhere defined. We are convinced that no mere tinkering with the description of the differences between a raiyat and tenure-holder contained in section 5 of the Act will meet the case. No definition of the term "raiyat" will serve to prevent the acquisition of the occupancy raiyati status by the wrong person if that status is limited to one person. In these circumstances, we consider that the best solution of the difficulty will be to give to all persons holding land under the person who enjoys the legal status of raiyat a right of occupancy as against his immediate landlord. We would except only cases of temporary subletting by persons who for genuine reasons are unable temporarily to cultivate the land themselves. In such cases we think it is reasonable that the temporary sub-tenants should be debarred from acquiring occupancy rights to the detriment of their lessors if the latter are able within a reasonable time to resume cultivation themselves. But, in all other cases, we would give the tenant an occupancy right as against his immediate landlord, that is, a permanent heritable right to hold the land so long as he pays the legal rent and complies with the conditions of the tenancy, and we would add to this the same protection against unreasonable enhancement of rent as is enjoyed by occupancy raiyats under the present Act and the same rights of transfer as we propose to give to occupancy raiyats. We feel, however, that it would in some cases be unjust to the superior landlord to force him to recognise the under-raiyat as his tenant in the event of the holding of the immediate landlord of the under-raiyat being sold in execution of a decree for arrears of rent, and we do not therefore propose to treat the occupancy right of the under-raiyat as a protected interest under section 160. We also propose some modifications in sections 86 and 87 to meet cases of surrender and abandonment by the immediate landlord.

7. The necessity for a radical alteration in the status provisions of the Act was forcibly brought to our notice in the course of our endeavours to find a solution of the difficulties which have arisen out of the existing law regarding the transfer of occupancy holdings. So far back as 1912, the High Court brought this matter to the notice of Government and represented the desirability of legislation to make it clear whether, in the absence of a usage entitling a raiyat to sell his holding without the landlord's consent, such a sale is void *ab initio* or merely voidable at the will of the landlord. The High Court suggested that the practice of selling holdings has become so universal that to make it wholly invalid would possibly prove unworkable in practice. This view being generally accepted, various attempts were made to devise regulations to govern the transfer of occupancy holdings without touching the main provisions of the Act, but they proved unsuccessful and it was eventually decided that the matter must stand over until a general amendment of the Act was undertaken. It was accordingly put in the forefront of the points which Government desired to bring under consideration. The question was much discussed before the passing of the Bengal Tenancy Act in 1885, and various alternatives were considered and discarded, with the result that the only reference to the matter, which appears in the Act as passed, is contained in the illustration to section 183, which lays down that a usage under which a raiyat is entitled to sell his holding without the consent of his landlord will not be affected by the Act. This provision is useless and mischievous because it is seldom possible for a raiyat or his transferee to prove the existence of the usage, and no guidance is afforded to the Courts in regard to the law to be applied to the numerous transfers which are effected without

the landlord's consent and without any proof of usage being put forward. We agree therefore with the High Court as to the necessity for positive legislation, but [illegible] no solution of the problem is possible which will be entirely [illegible]. It is desirable that the law on the subject should [illegible], but unfortunately the problem is far from simple. It has [illegible] of complexity, because the practice has been left [illegible] for more than half a century. Any attempt to [illegible] and direct methods must necessarily interfere with [illegible] to some extent, but the longer the matter is le[illegible] more complicated it will become, and it is necessary to [illegible] tenants to submit to some modification of their existing or [illegible] in return for the great advantage of having the matter put on a [illegible] definite basis.

8. The pressing importance of the question is shown by the fact that the number of transfers of occupancy holdings effected by registered deed has risen from 48,000 in 1884 to over 2,50,000 in 1913, and with the growing pressure of the population on the soil, leading to an ever-increasing demand for land and an ever-growing rise in the value of land, transfers are certain to increase in number, whatever the law on the subject may be. It is an established fact that occupancy rights are at present freely transferred without reference to and without the knowledge of the landlord. In most cases, the transferee secures recognition by going to the landlord either immediately after the sale or at some later period and paying him a *salami* and the arrears of rent due from the old tenant. In some cases, the landlord is unwilling for some reason or other to accept the transferee as his tenant, and the result is litigation on a question to which no positive law can be applied. We are convinced that, as matters stand, the only remedy is to recognise the existing widespread practice of transfer, and to admit the transferability of occupancy holdings subject to the safeguards necessary to protect the interests of the landlords and to secure the general welfare of the agricultural community. Apart from the question of the transfer fee, the landlord is entitled to object to an undesirable person being forced on him as a tenant, while it is clearly not in the interests of the agricultural community that occupancy holdings should be bought up by money-lenders and non-agriculturists and settled on a rack rent with cultivating tenants who would be mere tenants-at-will. Our proposal to give a limited occupancy right to all under-raiyats of whatever grade will, to a considerable extent, avoid the latter evil, but it is more difficult to meet the reasonable demands of the landlords. Any provision enabling the landlords to sue for the ejectment of a transferee whom they considered undesirable might lead to an enormous crop of litigation, and it would be difficult to define the grounds on which such suits should be brought. It is most desirable that these transfer transactions should, as far as possible, be settled by the parties themselves without reference to the Courts, and on the whole we think that the best method of enabling the landlord to get rid of a transferee whom he considers undesirable will be to give the landlord a right of pre-emption or rather of subsequent purchase from the transferee to be exercised within a reasonable time after the transfer is brought to his notice.

9. Our proposals for dealing with the whole question are contained in clause 22 of the draft Bill. Briefly, we provide that all transfers by private sale shall be made by registered instrument and that the registering officer shall immediately cause a notice of the transfer to be served upon the landlord. The transferee is required, within two months to tender payment to the landlord of the transfer fee, which may be deposited [illegible] applicable to the deposit of rent and will [illegible]. Except where the transfer [illegible] to a person [illegible] reasonable objection to [illegible] as his tenant [illegible] or a co-sharer in the holding, the landlord may within [illegible] the notice of the transfer have the holding [illegible] on payment to the transferee of the consideration money with [illegible] per cent. as compensation, together with any sum which

the transferee may have paid in respect of rent or landlord's fee. Analogous provisions, with the necessary modifications, are [illegible] meet the case of transfer by will or bequest or by sale in exe[illegible] decree. We have tentatively proposed to fix the transfer fee at 25 [illegible] consideration money, because from the enquiries made by [illegible] appears to be the rate usually levied at present. The rate is [illegible] means uniform. In some localities more than 25 per cent. is [illegible] less. Occasionally, the rent is also enhanced. We [illegible] that the question of the rate to be prescribed by law should [illegible] considered in the light of the opinions which will be received on our [illegible]

10. In view of the widespread difficulties and [illegible] exist regarding the rights of raiyats in trees, we have endeavoured to [illegible]roduce some [illegible] of these rights into the law. Under the [illegible]t law they [illegible] practically left to custom. We have not complete information [illegible] throughout the province, but it has been ascertained that [illegible] and that where disputes have arisen between landlord and [illegible] such disputes have been difficult of decision owing to the [illegible] of that custom. Frequently moreover the right is not of much monetary value. In these circumstances we consider that we are justified in proposing that the rights of the raiyat should be made as uniform as they can reasonably be made. Thus, it is reasonable, in our opinion, that the raiyat should have complete rights in trees on his holding, except in respect of valuable trees. In the latter case, we would provide that the tenant should be required to pay to the landlord a fee equivalent to one-fourth of the value of the timber used, or disposed of; on the precise fraction we are not, however, in agreement. The new section 23 A which we propose regarding trees has therefore been drafted on the above lines; and an explanation has been added indicating what constitutes valuable timber. We also propose to give similar rights to occupancy under-raiyats. The whole matter is however beset with difficulty, and our proposals should be regarded as tentative only and subject to further consideration on the receipt of fuller informatioin as to the custom prevalent in different localities.

11. We have made important modifications in section 40 of the Act dealing with the commutation of produce-rents into money-rents, because the present section is not generally workable in the province as now constituted. The majority of us are agreed that produce-rents are generally against the public interest; they encourage indifferent cultivation and are against the best interests of agriculture; in but few cases can the rents ever be described as moderate, and they tend to reduce the cultivator to the status of a labourer. We have therefore, having regard also to the fact that a tenant who pays his rent in produce has had for thirty-seven years a statutory right to commutation in the face of any contract to the contrary, retained the provisions for commutation, but have endeavoured to improve them in two important respects. In the first place, we consider that, when the landlord is dependent upon the produce-rent for the subsistence of himself and his household, it is inequitable that such a rent should be converted into a money-rent. There are many cases, particularly in Eastern Bengal, where middle class persons have sublet lands on produce-rents for their own subsistence. We therefore propose to except such and similar cases from commutation. In the second place, in view of the [illegible] which exists in many parts of Bengal between the average [illegible] obtained by the landlord and the money-rent into [illegible] that some compensation [illegible] a premium for commutation. These are [illegible] to the section have been [illegible] agreement as to details, we agree, on these two principles [illegible] consider that the amount of premium payable should be [illegible]

Our attention has, however, been drawn to the practice which exists in some parts of treating a person who hands over a part of the produce to the

original owner [illegible] as a labourer. Some of us consider this is justifiable; [illegible] incline to the opinion that the practice has been extended [illegible] operation of the section under consideration, and [illegible] the public interest to reduce the status of a [illegible]. The majority therefore propose that a *bonâ fide* [illegible] of the produce to the original owner of the land [illegible] notwithstanding any future contracts to the [illegible] a *bonâ fide* cultivator is to be defined as a person [illegible] ploughs, cattle and implements of agriculture.

[illegible] extend the provisions of section 40 to under-raiyats with [illegible] partly in accordance with the general principles already [illegible] regarding the rights of such under-raiyats and partly in order to [illegible] growth of a large class of under-raiyats holding on produce-rents [illegible] money-lenders, which the proposed sections relating to the transferability of occupancy rights might otherwise encourage. In fact, this proposal is a necessary corollary to those sections.

We also propose, in view of the obvious hardship which is caused by the payment of three years arrears of a large produce-rent to make the period of limitation for such rent-suits one year.

12. As our examination of the present Act proceeded it became obvious that, owing to the large number of cases in which many co-sharers were concerned in one tenancy either as landlord or tenant, it was necessary to try to simplify matters both for the landlord and tenant in the application of the law to such cases. Thus, as will appear from the notes on clause 63, we propose to introduce a common agent to act on behalf of co-sharer landlords for the receipt of notices of transfer and for the realisation of transfer fees, and, if the landlords desire it, for the realisation of rent also. Then, in the proposed sections 146A and 146B, we have endeavoured to meet the difficulties which landlords experience in trying to ascertain all the heirs and co-sharers in a holding before a rent-suit is brought with the possibility that a sale of the holding in execution of a decree obtained in that suit may subsequently be held to be invalid as a rent-sale under Chapter XIV on the ground that a small absentee co-sharer had been omitted from the suit. We propose that each co-sharer tenant should be jointly and severally liable for the rent of the tenancy, with the result, as at present, that a decree in a rent-suit purporting to be brought against the entire body of tenants would be a rent-decree. Further, if it appears later that a landlord has made parties to the rent-suit defendants whose shares in the tenancy aggregate three-fourths of the total, the decree obtained would remain a rent-decree, due provision being made for monetary compensation for co-sharers who were not parties to the suit. If, on the other hand, it appears that such shares aggregate less than three-fourths of the tenancy, the decree for rent would become a money-decree binding only on the parties to the suit. We have adopted the fraction of three-fourths, because we consider that any landlord may reasonably be expected to ascertain the owners of three-fourths of the shares of any tenancy under him. We do not, however, propose to interfere with the rulings according to which the decree is a valid rent-decree, if it is proved that the defendants in the suit represented the entire body of tenants in the holding, and we propose that a definite provision should be made in the law [illegible]. Again, in section 148A, we have endeavoured to meet the [illegible] co-sharer landlords in realising their individual shares of rents [illegible] we propose that a co-sharer land-[illegible] a suit for the arrears [illegible] parties as defendants [illegible] as plaintiffs, but [illegible] any [illegible] for rents due to [illegible] of the [illegible] would be merely a money decree. [illegible] obtained [illegible] co-sharer would, however, be a rent-decree valid against the [illegible] tenancy. The same simple principle underlying this amendment we propose should be extended to a number of cases which are

PRELIMINARY DRAFT OF A BENGAL TENANCY (AMENDMENT) BILL.

CONTENTS.

CLAUSE.

17. Substitution of new section for section 18C of Act VIII of 1885—

18C. Forfeiture of unclaimed landlord's fees.

18. Amendment of section 19 of Act VIII of 1885.

19. Substitution of new section for section 22 of Act VIII of 1885—

22. Bar to acquisition of occupancy rights by immediate landlord in raiyati holdings, and result of acquisition of holding of occupancy under-raiyat by immediate landlord.

20. Amendment of section 23 of Act VIII of 1885.

21. Insertion of new section 23A in Act VIII of 1885—

23A. Rights of occupancy raiyats in trees.

22. Insertion of new sections 26A to 26K in Act VIII of 1885—

26A. Application of sections 26B to 26K.

26B. Holdings of occupancy raiyats and occupancy rights transferable.

26C. Manner of transfer and notice to landlord.

26D. Landlord's fee for transfer.

26E. Tender, recovery and deposit of landlord's fee.

26F. Procedure on sale in execution of a decree or foreclosure of mortgage.

26G. Power to immediate landlord to purchase.

26H. Ejectment by landlords of certain under-raiyats after purchase of holding under section 26G.

26I. Limitation on mortgage by occupancy raiyats.

26J. Transfer of rent-free holdings.

26K. Interpretation.

23. Substitution of new section for section 36 of Act VIII of 1885—

36. Power to order progressive enhancement.

24. Amendment of section 38 of Act VIII of 1885.

25. Substitution of new section for section 40 of Act VIII of 1885—

40. Commutation.

CLAUSE.

CLAUSE.

45. Repeal of section 73 of Act VIII of 1885.

46. Amendment of section 74 of Act VIII of 1885.

47. Amendment of sections 76 and 79 of Act VIII of 1885.

48. Amendment of section 76 of Act VIII of 1885.

49. Amendment of section 77 of Act VIII of 1885.

50. Amendment of section 78 of Act VIII of 1885.

51. Amendment of section 80 of Act VIII of 1885.

52. Amendment of sections 82, 83, 86 and 87 of Act VIII of 1885.

53. Amendment of section 82 of Act VIII of 1885.

54. Amendment of section 85 of Act VIII of 1885.

55. Insertion of new section 86A in Act VIII of 1885—

86A. Effect of exemption from payment of rent or abatement of rent on account of diluvion.

56. Amendment of section 87 of Act VIII of 1885.

57. Insertion of new section 87A in Act VIII of 1885—

87A. Power to sub-lessee to take interest of sub-lessor on surrender and abandonment.

58. Amendment of section 88 of Act VIII of 1885.

59. Insertion of new sections 88A and 88B in Act VIII of 1885—

88A. Safeguard to other co-sharer landlords against limitation of interest by a co-sharer landlord.

88B. Safeguard to other co-sharer tenants against action of a co-sharer tenant rendering them liable to penalty.

60. Amendment of section 93 of Act VIII of 1885.

61. Amendment of section 95 of Act VIII of 1885.

61A. Amendment of section 96 of Act VIII of 1885.

62. Amendment of section 98 of Act VIII of 1885.

CLAUSE.

63. Insertion of new section 99A in Act VIII of 1885—

99A. Appointment of common agent in respect of transfer fees, and, if so empowered, to receive rent.

64. Amendment of section 100 of Act VIII of 1885.

65. Amendment of section 101 of Act VIII of 1885.

66. Amendment of section 102 of Act VIII of 1885.

67. Amendment of section 103B of Act VIII of 1885.

68. Amendment of section 104H of Act VIII of 1885.

69. Amendment of section 105 of Act VIII of 1885.

70. Amendment of section 105A of Act VIII of 1885.

71. Insertion of new sections 105B and 105C in Act VIII of 1885—

105B. Higher court-fees to be paid in certain cases in proceedings under section 105.

105C. Costs not to be awarded ordinarily in proceedings under section 105 by Revenue Officer.

72. Amendment of section 106 of Act VIII of 1885.

72A. Amendment of sections 107 and 108 of Act VIII of 1885.

73. Amendment of sections 108 and 115B of Act VIII of 1885.

74. Re-numbering of section 108A of Act VIII of 1885 as section 115B and amendment of that section.

75. Amendment of section 109 of Act VIII of 1885.

76. Amendment of section 109A of Act VIII of 1885.

77. Amendment of section 109B of Act VIII of 1885.

78. Amendment of section 109C of Act VIII of 1885.

79. Amendment of section 107 of Act VIII of 1885 and substitution of new section 109D for sections 109C and 109D of Act VIII of 1885—

109D. Note of decisions on record.

80. Amendment of section 110 of Act VIII of 1885.

81. Amendment of section 111B of Act VIII of 1885.

82. Amendment of section 112 of Act VIII of 1885.

CLAUSE.

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BILL

further to amend the Bengal Tenancy Act, 1885.

Preamble.

WHEREAS it is necessary further to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing;

And whereas the previous sanction of the Governor General under sub-section *(3)* of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title and extent.

1. *(1)* This Act may be called the Bengal Tenancy (Amendment) Act, 192 .

(2) It extends to the whole of Bengal.

Amendment of the Bengal Tenancy Act, 1885.

2. The amendments hereinafter set forth shall be made in the Bengal Tenancy Act, 1885 (as amended by subsequent legislation), hereinafter referred to as "the said Act."

Amendment of section 1 of Act VIII of 1885.

3. For sub-section *(3)* of section 1 of the said Act the following shall be substituted, namely:—

"*(3)* It extends by its own operation to the whole of Bengal, except—

(i) the town of Calcutta,

(ii) any area constituted a municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, and specified in a notification in this behalf by the Local Government,

(iii) the district of Darjeeling and the Chittagong Hill Tracts, and

(iv) those portions of the District of Jalpaiguri to which this Act is not for the time being extended by notification under the Scheduled Districts Act, 1874.

Explanation.—The words "the town of Calcutta" mean, subject to the exclusion or inclusion of any local area by notification under section 637 of the Calcutta Municipal Act, 1899, the area described in Schedule I to that Act."

Repeal of sub-section (2) of section 2 of Act VIII of 1885.

4. *(1)* Sub-section *(2)* of section 2 of the said Act is repealed.

(2) Sub-sections *(3)* and *(4)* are renumbered as sub-sections *(2)* and *(3)*.

Amendment of section 3 of Act VIII of 1885

5. In section 3 of the said Act—

(*a*) To clause (*3*) the following shall be added, namely:—

"Where a proprietor, tenant or occupant of land permits a person to cultivate such land on condition that the produce is shared between that person and the proprietor, tenant or occupant, and where that person himself provides the ploughs, cattle and implements of agriculture, that person shall, notwithstanding any contract made after the first day of November 1922, be deemed to be a tenant, unless in any contract made before the first day of November 1922, the contrary appears,"

(*b*) after clause (*4*) the following shall be inserted, namely:—

"(*4a*) 'co-sharer landlord' includes a joint landlord, and 'co-sharer tenant' includes a joint tenant".

(*c*) the words "or deliverable" in clause (*5*) shall be omitted,

(*d*) in clause (*9*), after the word "raiyat," the words "or under-raiyat" shall be inserted,

(*e*) after clause (*9*) the following shall be added, namely:—

"(*9a*) 'Homestead' means a building, not being a shop, occupied by a raiyat or under-raiyat, and required by him, by reason of his connection with his holding, as a dwelling-house, together with the site thereof and the land immediately appertaining thereto and the out-buildings on such land which are required by him as store-houses or for other domestic or agricultural purposes and the sites thereof,"

(*f*) (*i*) in clause (*10*), as inserted by section 4(*2*) of the Bengal Tenancy (Amendment) Act, 1907, after the words "the Government", where they occur for the first time, the words "which has been adopted by notification in the Calcutta or Eastern Bengal and Assam Gazette or" shall be inserted,

(*ii*) to that clause the proviso to clause (*10*), as inserted by section 4 (*2*) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be added, with the following modifications, namely:—

for the words "Eastern Bengal and Assam Gazette" the words "Calcutta Gazette" shall be substituted, and after the words "Board of Revenue" the words "accorded under the provisions of section 115A" shall be inserted, and

(*iii*) clause (*10*), as inserted by section 4 (*2*) of the Bengal Tenancy (Amendment) Act, 1907, and as so modified, shall be substituted for clause (*10*) as inserted by section 4 (*2*) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and

(*g*) for clause (*11*) the following shall be substituted; namely :—

"(*11*) 'Agricultural year' means the Bengali year commencing on the first day of Baisakh :

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 192 , any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of Baisakh next following the date of the commencement of that Act."

Substitution of new section for section 4 of Act VIII of 1885.

6. For section 4 of the said Act the following shall be substituted, namely :—

"4. There shall be, for the purposes of this Act, the following classes of tenants, namely :—

Classes of tenants

(*i*) tenure-holders including—

(*a*) permanent tenure-holders, which expression means tenure-holders and under-tenure-holders holding a tenure which is heritable and which is not held for a limited time ;

(*b*) temporary tenure-holders, which expression means tenure-holders and under-tenure-holders holding for a limited time ;

(*ii*) raiyats including—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity, whether such raiyats are or are not occupancy raiyats ;

(*b*) occupancy raiyats, that is to say, raiyats having a right of occupancy in the land held by them, whether or not such raiyats hold at fixed rates ;

(*c*) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy, whether or not such raiyats hold at fixed rates ; and

(*iii*) under-raiyats including-

(*a*) occupancy under-raiyats, that is to say, under-raiyats having a right of occupancy in the land held by them ;

(*b*) non-occupancy under-raiyats, that is to say, under-raiyats not having such a right of occupancy."

Amendment of section 5 of Act VIII of 1885.

7. In section 5 of the said Act—

(*a*) in sub-section (*2*) after the word "land" the words "either immediately under a proprietor or immediately under a tenure-holder" shall be inserted;

(*b*) for sub-section (*3*) the following shall be substituted, namely :—

"(*3*) 'Under-raiyat' means primarily a person who has acquired a right to hold land under a raiyat or under-raiyat for the purpose of cultivating it by himself or by members of his family or by hired servants or with the aid of partners and includes also the successors in interest of persons who have acquired such a right," and

(*c*) the *Explanation* below sub-section (*2*) shall be transferred below sub-section (*3*).

Amendment of section 7 of Act VIII of 1885

8. For sub-section (*3*) of section 7 of the said Act the following shall be substituted, namely :—

"(*3*) In determining what is fair and equitable the Court—

(*a*) shall presume, until the contrary is proved, that the rent for the time being payable is fair and equitable;

(*b*) shall have regard to the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure and whether the tenure was originally created at a specially low rent for the purpose of reclamation;

(*c*) shall have regard to the improvements, if any, made by the tenure-holder or his predecessors in interest; and

(*d*) shall not leave to the tenure-holder as profit less than 10 per cent. of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them."

Substitution of new section for section 8 of Act VIII of 1885.

9. For section 8 of the said Act the following shall be substituted, namely :—

Power to order gradual enhancement.

"8. If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments over a period not exceeding ten years as the Court may think fit to fix in this behalf."

Amendment of section 9 of Act VIII of 1885.

10. To section 9 of the said Act the following shall be added, namely :—

"and for the purposes of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order."

Substitution of new sections for sections 12 to 15 of Act VIII of 1885.

11. For sections 12 to 15 of the said Act the following shall be substituted, namely :—

"12. (1) A transfer of a permanent tenure by sale, exchange, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to *patni* or other tenures) can be made only by a registered instrument.

Voluntary transfer of permanent tenure.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, exchange, gift or usufructuary mortgage a permanent tenure, unless it is accompanied by a notice in the prescribed form and by such fee, if any, as may be prescribed for the service of such notice on the landlord.

(3) When the registration of any such instrument is complete, the registering officer shall serve the notice on the landlord named in the notice or on his common agent, if any, in the prescribed manner.

"13. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession in the prescribed form to the lowest Civil Court having jurisdiction to entertain a suit for rent of the tenure and shall deposit therewith the prescribed fee for the service of the notice on the landlord, and the Court shall cause the notice to be served on the landlord or his common agent, if any, in the prescribed manner :

Notice of succession to permanent tenure.

Provided that where mutation is made within six months of the succession at the instance of the person succeeding in the rent rolls of the landlord by the landlord or his agent, the person succeeding shall not be required to give notice under this section.

Explanation.

In this Chapter "succession" includes relinquishment or surrender by a Hindu widow, accelerating succession to the immediate reversioner.

"13A. If a person succeeding to a permanent tenure and required to give notice of the succession in accordance with the provisions of section 13 fails to do so within six months of the succession, he shall be liable to a fine not exceeding fifty rupees, to be imposed after summary enquiry by the Court.

Penalty for failure to give notice of succession to permanent tenure.

"14. (1) When a permanent tenure is transferred by sale, exchange (other than partition), gift or usufructuary mortgage or by succession, a fee of the following amount (hereinafter called "the landlord's fee") shall be payable to the landlord, namely :—

Payment of landlord's fee on transfer of permanent tenure

(a) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure, provided that no such fee shall be less than one rupee or more than one hundred rupees ; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees.

(2) The transferee shall, within two months of the date on which the registration is complete or within six months of the date on which the succession takes place, as the case may be, tender payment of the landlord's fee to the landlord or his common agent, if any, and the provisions of this Act relating to the tender and deposit in Court of an arrear of rent shall apply to the tender and deposit in Court of the landlord's fee, and such fee shall be recoverable as an arrear of rent :

Provided that—

(a) in the case of the transfer of a share, that share alone may be sold in execution of a decree for realization of the landlord's fee ;

(b) in no case shall a tenure or share be sold without due notice to the transferor.

"15. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when a mortgage of a permanent tenure other than a usufructuary mortgage thereof is foreclosed, the Court shall, before confirming the sale under rule 92 in Order XXI in Schedule I to the Code of Civil Procedure, 1908, or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to pay into Court the landlord's fee prescribed by section 14, together with costs necessary for its transmission to the landlord and such further fee as may be prescribed for service on the landlord of notice of the sale or final foreclosure.

Transfer of permanent tenure by sale in execution of a decree other than a decree for rent.

(2) When the sale has been confirmed or when a decree or order absolute for the foreclosure has been made, the Court shall send to the landlord or to his common agent, if any, the landlord's fee and a notice of the sale or final foreclosure in the prescribed form and manner."

Amendment of section 16 of Act VIII of 1885.

12. In section 16 of the said Act the word "distraint" shall be omitted and for the words "until the Collector has received the notice, fees and costs referred to in the last foregoing section" the words "until the duties imposed on him by section 13 or the proviso to that section have been performed" shall be substituted.

Insertion of new section 16A in Act VIII of 1885.

13. After section 16 of the said Act, the following shall be inserted, namely :—

"16A. In sections 13 to 16 the words 'person succeeding,' 'transferee,' 'purchaser,' 'mortgagee' and 'person entitled to a permanent tenure by succession,' where they occur, include the successors in interest of such persons."

Interpretation.

Amendment of section 18 of Act VIII of 1885.

14. (*1*) Section 18 of the said Act shall be re-numbered as section 18 (*1*) and in that sub-section as renumbered—

(*i*) the word "and" at the end of clause (*a*) shall be omitted;

(*ii*) after clause (*b*) the following shall be added, namely :—

"and

(*c*) shall be deemed to be a settled raiyat of the village if he complies with the conditions set forth in section 20."

(*2*) After that sub-section as renumbered the following shall be inserted, namely :—

"(*2*) The provisions of sections 23 to 39 (both inclusive) shall not apply to raiyats holding at fixed rates, even though such raiyats have a right of occupancy in the lands of their holdings."

Amendment of section 18A of Act VIII of 1885.

15. For section 18A of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, section 18A of the said Act, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 18B of Act VIII of 1885.

16. For clause (*a*) of section 18B of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, clause (*a*) of that section, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Substitution of new section for section 18C of Act VIII of 1885.

17. For section 18C of the said Act, as inserted by section 8 of the Bengal Tenancy (Amendment) Act, 1907, and for section 18C of the said Act, as inserted by section 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be substituted, namely :—

"18C. All landlords' fees deposited with the Collector before the passing of the Bengal Tenancy (Amendment) Act, 1922, under Chapter III or Chapter IV may, unless accepted or claimed by the landlord within three years from the date of such deposit, be forfeited to the Government."

Forfeiture of unclaimed landlords' fees.

Amendment of section 19 of Act VIII of 1885.

18. For section 19 of the said Act, as modified by section 9 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, section 19 of the said Act, as modified by section 9 of the Bengal Tenancy (Amendment) Act, 1907, shall be substituted.

Substitution of new section for section 22 of Act VIII of 1885.

19. For section 22 of the said Act the following shall be substituted, namely :—

Bar to acquisition of occupancy rights by immediate landlord in raiyati holdings, and result of acquisition of holding of occupancy under-raiyat by immediate landlord.

"22. (*1*) Where the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder, as the case may be.

(*2*) Where the entire raiyati interest in an occupancy holding is acquired by transfer, succession or in any other way whatsoever by a person who is a proprietor or permanent tenure-holder, and is interested in the lands of the holding as a co-sharer immediate landlord, the raiyati interest with all the rights attached thereto in the lands of the holding shall be extinguished and the interest thereafter held by such proprietor or permanent tenure-holder in virtue of such acquisition shall be deemed to be a permanent tenure created in respect of such lands under the operation of this sub-section, and he shall pay to the immediate landlords of the former raiyat on account of such tenure the same rent as was paid by the former raiyat on account of the former holding, subject to the principles of this Act regulating the enhancement and reduction of rents of permanent tenure-holders :

Provided that, if the former raiyat held at a rent or rate of rent fixed in perpetuity, such rent or rate of rent shall not be changed except in accordance with the provisions of section 52 :

Provided also that the rent of such permanent tenure shall not be limited on the ground that the rate of rent is above the customary rate payable by persons holding similar tenures in the vicinity or that the profit of the permanent tenure-holder is less than ten per cent. of the balance that remains after deducting from his gross rents the expenses of collection.

(*3*) Subject to the provisions of sub-section (*6*), the person, if any, who was the immediate under-raiyat of the former occupancy raiyat, if such under-raiyat was an occupancy under-raiyat in respect of such lands or a settled raiyat of the village, shall become an occupancy raiyat in respect of the lands of the former raiyati holding, and, if he

was a non-occupancy under-raiyat of the village, he shall become a non-occupancy raiyat in respect of such lands, and the rent thereafter payable by such person as raiyat shall in either case be the rent that was payable by him as under-raiyat, subject to the provisions contained in this Act as to the enhancement and reduction of the rent of occupancy or non-occupancy raiyats, as the case may be.

(4) If there is any incumbrance on the lands of the former raiyati holding, such incumbrance, unless it is annulled in proceedings under Chapter XIV, shall thereafter be deemed to be an incumbrance on the interest of the landlord, as proprietor or permanent tenure-holder, which continues under sub-section (1) or accrues under sub-section (2) in respect of such lands.

(5) If the right of an occupancy under-raiyat and his immediate landlord becomes united in the same person by transfer, succession or in any other way whatsoever, or if an occupancy under-raiyat becomes an occupancy raiyat under the provisions of sub-section (4), the right of the occupancy under-raiyat, as such, shall be extinguished, and any incumbrance on the holding of such occupancy under-raiyat shall, unless it is annulled under the provisions of Chapter XIV, attach to the interest of the said immediate landlord or to the interest of the said occupancy raiyat, as the case may be.

Any immediate under-raiyat of such occupancy under-raiyat shall, unless his interest is annulled under the provisions of Chapter XIV, hold as under-raiyat under the said immediate landlord, or the said occupancy raiyat, as the case may be, and shall, subject to the provisions of this Act as to the enhancement and reduction of such rent, pay to such immediate landlord or to such occupancy raiyat, as the case may be, the rent that was payable by him to his former landlord immediately before the extinguishment of the interest of that landlord.

(6) Nothing contained in this section shall affect—

(i) the rights of a landlord who purchases a holding at a sale in execution of a decree for arrears of rent to annul incumbrances on such holding in the manner provided in Chapter XIV;

(ii) the rights of purchase conferred on co-sharer immediate landlords by section 26G, where the entire raiyati or under-raiyati interest in an occupancy holding has been acquired by another co-sharer immediate landlord of the same;

(iii) any right of ejectment which may be exercised by a landlord under section 26H.

These rights may be exercised as if the occupancy holding of the former raiyat and any holding of an under-raiyat thereunder had continued to exist.

(7) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a raiyat any land comprised in his temporary tenure or farm.

Explanation.—A person having a right to hold the lands of an occupancy holding as a raiyat does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land as a temporary tenure-holder or in farm.

Illustrations.

1. X, a raiyat having the entire raiyati interest in an occupancy holding immediately under A, a sole proprietor, purchases the interest of A. X, is a proprietor in respect of the lands formerly held by him as raiyat.

2. A is a sole proprietor. X is a raiyat having the entire raiyati interest in an occupancy holding under A. Y is an under-raiyat under X in respect of half the lands of the holding of X. X cultivates the remainder. A purchases by private purchase the interest of X. Y becomes a raiyat under A in respect of the lands held by him and A holds the remainder *khas* as proprietor. A then settles the *khas* lands with Z, a raiyat. Z is a raiyat under A in respect of those lands.

3. A, B and C are co-sharer permanent tenure-holders, and are the immediate landlords in respect of an occupancy holding held by X. A purchases the raïyati interest of X who cultivates the holding himself. A becomes a permanent tenure-holder under A, B and C in respect of the lands, and, if he thereafter settles them with Z, a raiyat, Z becomes raiyat under the permanent under-tenure-holder A.

Amendment of section 23 of Act VIII of 1885.

20. In section 23 of the said Act the words "but shall not be entitled to cut down trees in contravention of any local custom" shall be omitted.

Insertion of new section 23A in Act VIII of 1885.

21. After section 23 of the said Act the following shall be added, namely :—

Rights of occupancy raiyats in trees.

"23A. Subject to the provisions of section 23, when a raiyat has a right of occupancy in respect of any land, he shall be entitled—

(*i*) to plant,

(*ii*) to enjoy the flowers, fruits and other products of,

(*iii*) to fell, and

(*iv*) to utilize or dispose of the timber of,

any tree on such land :

Provided that, if any such raiyat fells any valuable tree on such land or utilizes or disposes of the timber of any such tree which has fallen or been felled, he shall pay to the proprietor, or, where tenure-holders intervene, then subject to the provisions of any contract reserving the right to any landlord of a superior grade, to the tenure-holder, who is the immediate landlord of the raiyati holding, a fee of 25 per cent. of the value of such timber.

Explanation.—" Valuable trees" include jack fruit (kathal) trees, tal trees, jam trees, mango trees and trees valuable for their timber."

Insertion of new sections 26A to 26K in Act VIII of 1885.

22. After section 26 of the said Act the following shall be inserted, namely :—

Application of sections 26B to 26K.

" 26A. The provisions of sections 26B to 26K shall apply to all transfers of holdings or portions or shares of holdings of occupancy raiyats and the occupancy rights therein made after the , 192 .

Holdings of occupancy raiyats and occupancy rights transferable.

" 26B. The holding of an occupancy raiyat or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Manner of transfer and notice to landlord.

" 26C. Every transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree. The registering officer shall not register any such instrument unless it is accompanied by a notice giving particulars of the transfer in the prescribed form and accompanied by the fee prescribed for the service of such notice on the landlord, and in the case of a transfer of more than one holding, or of portions or shares of more than one holding, or of a holding and a portion or share of another holding, unless the sale price of each holding, portion or share transferred is stated separately in the instrument. The registering officer shall cause the notice to be served upon the landlord or upon his common agent, if any, appointed under section 99A, in the prescribed manner. In the case of a transfer by bequest, the transferee shall within two months of taking possession or obtaining probate or letters of administration, whichever is earlier, cause a notice in the same form to be served on the landlord or his common agent, if any, in the prescribed manner through the lowest Civil Court having jurisdiction to entertain a suit for the rent of the holding.

26D. The transferee shall, except in the case of the transfer of a rent-free holding or of a transfer by bequest in favour of a natural heir, within two months of the date on which the notice is presented to the registering officer or to the Civil Court, as the case may be, tender payment to the landlord or his common agent, if any, of a fee which shall amount—

Landlord's fee for transfer.

(*a*) in the case of the sale of a holding or portion or share of a holding, in respect of which a produce rent is payable in whole or in part, to 25 per cent. of the consideration money;

(*b*) in the case of the sale of a holding or portion or share of a holding, in respect of which a money rent is payable, to 25 per cent. of the consideration money or to six times the annual rent of the holding or of the transferred portion or share thereof, whichever is greater;

(*c*) in the case of a transfer by exchange, gift or bequest, to six times the annual rent of the holding, or of the transferred portion or share:

Provided that—

(*i*) in the case of a transfer of a holding or portion or share thereof by exchange, gift or bequest; and

(*ii*) in the case of the transfer, other than a sale in execution of a decree, of a portion or share of a holding, if the division of the holding or distribution of the rent payable in respect thereof has not been made with the express consent of the landlord or of his agent duly authorized in that behalf,

the landlord may within two months of the receipt of the notice of transfer apply to the lowest Civil Court having jurisdiction to entertain a suit for rent of the holding to fix the market value of the holding or of the transferred portion or share, and the landlord's fee shall amount to 25 per cent. of such market value:

"26E. The provisions of this Act relating to the deposit in Court and tender of an arrear of rent shall apply to the deposit in Court and tender of a landlord's fee payable under section 26D, and such fee may be recovered by the landlord as an arrear of rent, together with interest or damages:

Tender, recovery and deposit of landlord's fee.

Provided that—

(*a*) in the case of the transfer of a share that share alone may be sold in execution of a decree for realization of the fee;

(b) in no case shall the holding or share be sold without due notice to the transferor.

"26F. (1) When the holding of an occupancy raiyat or a portion or share thereof is sold in execution of a decree other than a decree for an arrear of rent or dues recoverable as such, and neither the purchaser nor decree-holder is the sole landlord, the Court shall, before confirming the sale, require the purchaser to deposit in addition to the purchase money a fee calculated at the rate of 25 per cent. of the purchase money, or six times the annual rent of the holding or portion or share thereof, whichever is greater, and to file a notice in the prescribed form. The Court shall then cause the fee to be paid to the landlord and notice of the sale to be served upon him:

Procedure on sale in execution of a decree or foreclosure of mortgage

Provided that the landlord may within one month of receiving the notice apply to the Court to fix the market value of the holding or portion or share thereof, and the purchaser shall be liable to pay to the landlord any additional fee calculated upon such market value in excess of the fee which he has already paid.

(2) When a mortgage of a holding of an occupancy raiyat or of a portion or share thereof is foreclosed, and the decree-holder is not himself the sole landlord, the Court shall, before making a decree or order absolute for the foreclosure, determine the market value of the holding and require the mortgagee to deposit a fee calculated at 25 per cent. of such market value and to file a notice in the prescribed form, and on making such decree or order absolute shall forward the fee, together with the notice of the foreclosure, to the landlord.

"26G. (1) Except in the case of a transfer by bequest in favour of a natural heir, or to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or of the transfer of a rent free occupancy holding or portion or share thereof, the immediate landlord of the holding may, within two months of the completion of the registration of the instrument of transfer or of the service of the notice of the transfer issued under section 26C, or, in cases to which section 26F applies, of the service of the notice issued under that section, apply to the Court that the holding or portion or share thereof shall be transferred to himself. The application shall be dismissed, unless such landlord at the time of making it, or within such period as the Court may fix, deposits in Court the amount of the consideration money paid by the transferee, as stated in the notice served on him, together with compensation at the rate of 10 per

Power to immediate landlord to purchase

cent. of such consideration money, or, if the transfer is made by way of exchange, gift or bequest, such sum as the Court may, in the first instance, approximately estimate to be the market value of the holding, portion or share, together with compensation on such market value at the above rate. If there is any dispute as to whether the amount of the consideration money has been stated correctly in the notice, the Court shall decide the same and shall allow to the landlord such further time as it may think fit for him to deposit the balance, if any.

(2) If such deposit is made, the Court shall give notice to the transferee to appear within such period as the Court may fix and state what other sums he has paid in respect of rent for the period after the date of transfer or landlord's fee, and, if the transferee complies, the Court shall direct the immediate landlord to deposit such amount as the transferee has paid on this account, together with interest with effect from the date on which such rent or landlord's fee has been paid at a rate not exceeding 12½ per cent. per annum, within such period as the Court thinks reasonable. The Court shall also in the case of a transfer by exchange, gift or bequest finally determine the market value of the holding or portion or share thereof and shall direct the landlord to deposit, or shall return to the landlord, as the case may be, the balance due on such market value with compensation at the above rate.

(3) If the deposits required under sub-sections (1) and (2) are made within the period fixed by the Court, they shall be paid to the transferee, and from the date of the order for payment—

(i) the right, title and interest of the transferee in the holding or portion or share thereof shall, subject to the provisions of section 22, be deemed to have vested in the immediate landlord, and

(ii) the liability of the transferee for the rent due on account of the holding shall cease.

The Court on the application of the immediate landlord may also place him in possession of the property so transferred to him. When a transferee is divested of his right, title and interest under the provisions of this sub-section, he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a raiyat ejected from his holding by proceedings for his ejectment commencing on the date on which the landlord applied to the Court under sub-section (1).

(4) The powers and rights conferred and duties imposed by sub-sections (1), (2) and (3) on the immediate landlord shall, in cases where there are co-sharer immediate landlords of the holding, be conferred and imposed on the entire body of immediate landlords:

Provided that, if the entire body of immediate landlords do not apply to the Court in accordance with the provisions of sub-section (*1*), such proportion of the co-sharer immediate landlords as have an aggregate of interests in the lands of the holding not less than one-half of the entire interest of all the co-sharer immediate landlords therein may apply to the Court in accordance with the provisions of that sub-section, and in that case such proportion of co-sharers shall for all the purposes of this section be deemed to be the immediate landlord to the exclusion of those co-sharers who do not so apply and without any further power of purchase under this section to any co-sharer landlord:

Provided also that when application has been made under sub-section (*1*) by co-sharer immediate landlords in accordance with the first proviso to this sub-section, any of the remaining co-sharer immediate landlords, including the transferee, if one of them, may within the period of two months referred to in sub-section (*1*) apply to join in the application of the co-sharer immediate landlords aforesaid. Such application shall be granted if at the time of making the application or within such period as the Court may fix [not extending beyond the period of two months referred to in sub-section (*1*)] the co-sharer landlord applying under this proviso deposits in Court, for payment to the co-sharer landlords by whom the deposit has been or is to be made, such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (*1*).

"26 H. Where a landlord acquires a holding or a share or portion thereof under the provisions of section 26G, he shall be entitled, notwithstanding anything contained elsewhere in this Act, to bring a suit, within one year of the date on which he acquired the holding, portion or share, as the case may be, for the ejectment of any under-raiyat holding land within such holding, if—

Ejectment by landlord of certain under-raiyats after purchase of holding under section 26G.

(*i*) the tenancy of such under-raiyat or his predecessor in interest was created after the thirty-first day of December, 1914, and

(*ii*) the transferee from whom the landlord has purchased under that section, or the predecessor in interest of such transferee, was the sole immediate landlord of such under-raiyat in respect of such land:

Provided that, where the under-raiyat or any of his predecessors in interest held such lands before the first day of January, 1915, as an immediate under-raiyat under a predecessor in interest of the transferee, the

tenancy of such under-raiyat shall be deemed to have been created before that date, and to continue, notwithstanding any re-settlement of the lands that may have been made with him or any of his predecessors in interest.

"26I. (1) An occupancy raiyat may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and can not, in any possible event, by any agreement, express or implied, exceed nine years.

Limitation on mortgage by occupancy raiyat.

(2) Every mortgage so entered into shall be registered under the Indian Registration Act, 1908.

(3) Notwithstanding anything contained elsewhere in this Act or in any other law, no other form of usufructuary mortgage for any term entered into by an occupancy raiyat in respect of his holding or portion or share thereof shall have any force or effect, and no document creating or purporting to create a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy raiyat for a period exceeding or which can exceed nine years, or an usufructuary mortgage for any term of such holding, portion or share, other than a complete usufructuary mortgage, shall be admitted to registration, nor shall any such document be received in evidence or acted on in any Court of law, or by any public servant.

Explanation.

A "complete usufructuary mortgage" in this section has the meaning set forth in the Explanation to sub-section (2) of section 49E.

"26J. The fee payable by the transferee to the landlord for the transfer of a rent-free holding or of a portion or share of a rent-free holding of an occupancy raiyat shall be two rupees and shall be paid in the manner provided in section 14 or section 15, as the case may be, and notice of the transfer of such holding, portion or share shall be given to the landlord in the manner set forth in sub-section (2) of section 12, section 13 or section 15 according to the circumstances of the transfer.

Transfer of rent-free holdings.

"26K. (1) In sections 26C, 26D, 26E, 26G, 26H and 26J "transferee" includes the successors in interest of the transferee, and in section 26F and in this section "purchaser" includes the successors in interest of the purchaser.

Interpretation and savings.

(2) In sections 26C, 26D and 26G "transfer" does not include—

(i) partition,

(ii) lease or simple mortgage,

(*iii*) usufructuary mortgage, or

(*iv*) mortgage by conditional sale, until a decree or order absolute for foreclosure is made."

(*3*) For the purposes of sections 26D and 26G the term "consideration money" shall be deemed to include any sum due at the date of sale on account of mortgage of the land transferred and also any sum which the purchaser has paid or agreed to pay on account of rent due before the date of the transfer, whether such sums are or are not included in the consideration money as set forth in the instrument of transfer.

(*4*) Neither the acceptance of a landlord's fee on account of the transfer of an occupancy holding or portion or share thereof nor the making of an application to the Court to fix the market value in accordance with the first proviso to section 26D or the proviso to section 26F shall operate as an admission of the amount or fixity of rent or the area or any incident of such occupancy holding other than the existence of an occupancy right therein, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof."

Substitution of new section for section 36 of Act VIII of 1885.

23. For section 36 of the said Act the following shall be substituted, namely:—

"36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree."

Power to order progressive enhancement.

Amendment of section 38 of Act VIII of 1885.

24. In sub-section (*1*) of section 38 of the said Act—

(*i*) after the words "of his rent on" the words "one or more of" shall be inserted, and the word "or" at the end of clause (*a*) shall be omitted,

(*ii*) at the end of clause (*b*), the following shall be added, namely:—

"(*c*) on the ground that the landlord has failed to carry out the arrangements, in respect of irrigation or the maintenance of embankments which were in force at the time when the rent was settled,

Substitution of new section for section 40 of Act VIII of 1885.

25. For section 40 of the said Act the following shall be substituted, namely:—

"40. (*1*) When a raiyat or an under-raiyat having occupancy rights in a holding pays for the holding rent in kind or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in cash, either the tenant or the landlord may apply to have the rent commuted to a money rent.

Commutation.

(*2*) The application may be made to the Collector or to a Sub-divisional Officer or to a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(*3*) A case for commutation may be determined by the officer who receives the application, or by some other officer competent under sub-section (*2*) to receive applications for commutation, to whom the case is transferred by him.

(*4*) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for determination of the case.

(*5*) If the application is opposed, the said officer shall decide whether in all the circumstances of the case it is reasonable to grant it, and, in particular, he shall have regard to the following circumstances:—

(*a*) whether the rent in kind is mainly required for the subsistence of the landlord and his household, and not for purposes of trade;

(*b*) in the case of land held under trust or other legal obligation for a religious or charitable purpose, whether the rent in kind is required for consumption by, or for the subsistence of, the beneficiaries of the endowment, or for the due performance of worship;

(*c*) whether the landlord of the applicant pays in kind or otherwise as specified in sub-section (*1*) his rent for the tenure or holding;

(*d*) whether the tenant receives in respect of any portion of the land rent in kind or otherwise as specified in sub-section (*1*) from a sub-lessee;

(*e*) if the land is in an area under reclamation, whether it would be inequitable to fix a money rent in the conditions prevailing at the time when the application is made.

(*6*) If the application is unopposed or if the said officer after considering the case put forward by both parties decides to grant it, he shall determine the sum to be paid on commutation as money rent and the premium, if any, to be paid to the landlord for the commutation, and shall order that the tenant shall, in lieu of paying the rent in kind or otherwise as specified in sub-section (*1*), pay the sum so determined and the premium, if any.

(*7*) In making the determination of the sum to be paid as money rent, the officer shall have regard to—

(*a*) the average money rent payable by occupancy raiyats or occupancy under-raiyats, as the case may be, for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges;

(*d*) improvements effected by the landlord or by the tenant in respect of the holding and the rules laid down in section 33 regarding enhancement of rent on the ground of a landlord's improvement; and

(*e*) any sum agreed to by the parties to be paid as money rent:

Provided that—

(*i*) the officer shall in no case determine a rent which is unfair or inequitable, or, except for special reasons to be recorded in writing, which exceeds the average value of the rent actually received, as determined under clause (*b*); and

(*ii*) if at any time during the preceding fifteen years the rent in kind or otherwise as aforesaid has been substituted for a money rent, or if the rent has been enhanced, regard shall be had to the rent paid before the substitution or enhancement took place and to the rules laid down in this Act for the guidance of the Civil Court in enhancing rents.

(*8*) If the average value of the rent actually received, as determined under clause (*b*) of sub-section (*7*), is materially in excess of the sum determined as rent under sub-section (*6*), then the officer shall determine a sum to be paid as premium. In determining the premium the officer shall

primarily have regard to the market value of the land less the capitalized value of the rent settled, but the amount so determined shall not exceed fifteen times the rent determined under sub-section *(6)*.

(9) The order for commutation shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary to be recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is passed.

(10) The officer may on the application of the tenant order that the premium shall be paid by instalments not exceeding fifteen in number, that the first instalment shall be paid at the beginning of the agricultural year, in which the rent settled under clause *(6)* takes effect, and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(11) The premium or the instalments thereof shall be payable and recoverable as rent, but interest shall only be awarded in respect of such instalments as are not paid by the dates fixed under sub-section *(10)*.

(12) If the officer refuses the application, or determines a rent or premium or both, his order shall be subject to appeal to the Special Judge appointed under section 115C, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal, if circumstances have in the meantime changed.

(13) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as provided in this section."

Amendment of section 44 of Act VIII of 1885.

26. For clause *(c)* of section 44 of the said Act the following shall be substituted, namely :—

"*(c)* On the ground that the lease or the period of the settlement, under which he has been admitted to occupation of the land, has expired."

Amendment of section 46 of Act VIII of 1885.

27. In sub-sections *(1)*, *(2)* and *(3)* of section 46 of the said Act for the words "an agreement" the words "a draft of an agreement" shall be substituted.

Substitution of new section for section 48 of Act VIII of 1885.

28. For section 48 of the said Act the following shall be substituted, namely :—

Occupancy under-raiyats.

"48. All under-raiyats, other than under-raiyats holding only by reason of a temporary lease for a term not exceeding nine years granted by or on behalf of a raiyat or under-raiyat, who is disabled by age, sex, disease, accident or temporary absence from home from cultivating his land by himself or by members of his family or by hired servants or with the aid of partners, shall be occupancy under-raiyats :

Provided that under-raiyats who have been holding under a temporary lease for a term not exceeding nine years granted by or on behalf of persons of the classes referred to above shall not become occupancy under-raiyats on the expiry of the lease—

(i) if they are sued for ejectment within one year of the date of expiry of the lease and ejected by means of such suit,

(ii) if they surrender the land voluntarily within one year of the expiry of the lease, or

(iii) if during the currency of the lease or within one year of its expiry they take a new lease which fulfils the conditions set forth in this section and is granted by a person of the classes referred to above.

Explanation.

An under-raiyat who has become an occupancy under-raiyat in respect of any land shall thereafter for the purposes of this section be deemed to hold such land in virtue of his occupancy right therein and not only by reason of any lease which may thereafter be granted by a person of the classes referred to above.

Illustrations.

1. A, an under-raiyat, holds under a lease given for nine years by B, a disabled person. B dies and his holding is inherited by C, who is not disabled. A continues to be a non-occupancy under-raiyat under C till the expiry of the lease, but if C does not sue A for ejectment within one year of the date of expiry of the lease, A becomes an occupancy under raiyat under C.

2. A has become an occupancy under-raiyat under C, who is not a disabled person. C sells his interest to D, a disabled person. A continues to be an occupancy under-raiyat under D notwithstanding any lease granted by D to him."

Insertion of new section 48A in Act VIII of 1885.

29. After section 48 of the said Act the following section shall be added, namely :—

Rights and liabilities of occupancy under-raiyats.

"48A. (1) An occupancy under-raiyat shall have as against his immediate landlord all the rights and liabilities of a raiyat with occupancy rights as set forth in

Chapter V, other than those conferred by sub-section *(1)* of section 19 and by sections 20 21 and 22 (save as expressly provided in that section), and his holding shall as against such landlord be deemed to be the holding of an occupancy raiyat :

Provided that the fee payable under section 26D shall, in the case of the sale of a holding of an occupancy under-raiyat in respect of which a money rent is payable, amount to 25 per cent of the consideration money or to six times the annual rent of the holding or share or portion of the holding transferred, whichever is less, and, in the case of a transfer by exchange gift or bequest, to twice the annual rent of the holding and that the provisos to section 26D shall not apply thereto

(2) The interest of an occupancy under-raiyat shall not be deemed to be a protected interest under clause *(d)* of section 160 "

Amendment of section 49 of Act VIII of 1885

30. *(1)* Section 49 of the said Act shall be re-numbered as section 49 *(1)* and in that sub-section as re-numbered

(a) for the words "An under raiyat" at the beginning of the sub-section the words "A non-occupancy under-raiyat" shall be substituted

(b) in clause *(b)* after the words "written lease" the words "for a term" shall be inserted

(2) After sub-section *(1)* as so re-numbered the following sub-section shall be added namely —

"(2) Subject to the provisions of this Act, and in so far as such terms are not inconsistent therewith the terms of the lease shall govern the remaining incidents of the holding of an non-occupancy under-raiyat "

Amendment of section 50 of Act VIII of 1885

31. In section 50 of the said Act —

(a) sub-section *(2)* is repealed and

(b) in sub-section *(3)*—

(i) after the words "held by a" the words "tenure-holder or a" shall be inserted,

(ii) for the word "holding" in the two places where it occurs the word "tenancy" shall be substituted

Amendment of section 52 of Act VIII of 1885

32. For sub-section *(6)* of section 52 of the said Act the following shall be substituted, namely —

"*(6)* When in a suit under this section the landlord or tenant proves that at or about the time when the area was recorded in any patta or kabuliyat there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or, where the landlord or tenant

proves that the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a longstanding practice of settlement on measurement prevailed at the time when the rent-roll was prepared, it shall be presumed that the area of the tenure or holding was settled by measurement."

Substitution of new sub-sections for sub-sections (1) and (2) of section 54 of Act VIII of 1885.

33. For sub-sections (*1*) and (*2*) of section 54 of the said Act the following shall be substituted, namely:—

"54. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

Time and place for payment of rent.

(*2*) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord, or the rent may be paid by postal money order in accordance with such rules, as the *Local Government* may from time to time make either generally or for any specified local area authorizing a tenant to pay his rent by postal money order and, where rent may be paid by postal money order in accordance with such rules, and the postal receipt in the prescribed form for a money order alleged to have been sent in payment of such rent to the address of the landlord or of his agent, is produced in support of a plea of tender, the Court shall presume, until the contrary is proved, that such tender has been made:

Provided that, when a landlord accepts rent sent by postal money order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form."

Substitution of new section for section 57 of Act VIII of 1885.

34. For section 57 of the said Act the following shall be substituted, namely:—

"57. (*1*) Each tenant shall be entitled to receive from the landlord free of charge, on demand on the expiry of three months after the end of each agricultural year, a statement of account for that year specifying the several particulars shown in the form of account given in Schedule *II* to this Act or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

Tenant entitled to statement of account at end of year.

The entry of area in such statement of account shall not be binding on the landlord or the tenant in any suit or proceeding for the alteration of the rent of the tenure or holding.

(2) The year and instalment to which a payment is credited under section 55 shall be clearly specified in the statement of account furnished to the tenant under sub-section (1).

(3) The landlord shall prepare and retain a copy of the statement giving the same particulars."

Amendment of section 58 of Act VIII of 1885

35. In section 58 of the said Act —

(a) for sub-section (2) the following shall be substituted, namely :—

"(2) if after the expiry of two months from the date of the demand made under section 57 a landlord, without reasonable cause, refuses or neglects to deliver the statement of account prescribed in section 57 for that year to a tenant demanding the same, the tenant may, within six months of the demand, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the account should have been delivered ;"

(b) in sub-section (1) for the words "one year" the words "two years" shall be substituted ;

(c) after sub-section (8) the following shall be added, namely :—

"(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall in no case be considered a reasonable cause for not tendering a receipt for any instalment actually paid, or for failure to furnish the statement of account prescribed in section 57, and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable excuse for not retaining a counterfoil fully filled up."

Amendment of section 61 of Act VIII of 1885.

36. In section 61 of the said Act for the words "the full amount of the money then due" at the end of sub-section (1), the words "a sum not less than the amount of the money then due" shall be substituted, and in sub-section (2) after the words "the deposit is to be entered" the words "and the name of his common agent, if any," shall be inserted.

Substitution of new secn for section of Act VIII 1885.

37. For section 63 of the said Act the following shall be substituted, namely:—

Procedure for payment to the landlord of rent deposited.

"63. The Court receiving a deposit—

(*i*) in case (*a*) or (*b*) of section 61 shall forthwith forward the same by postal money order to the address of the landlord or of the common agent, if any, of the landlord empowered to receive rent;

(*ii*) in case (*c*) or (*d*) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under the next following section within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (*c*) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village office or in some conspicuous place in the village in which the holding is situated, and in case (*d*) cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit."

Amendment of section 64 of Act VIII of 1885

38. In section 64 of the said Act—

(*a*) in sub-section (*1*) after the words "amount of the deposit" the words "notified under section 63" shall be inserted;

(*b*) sub-section (*2*) shall be omitted; and

(*c*) sub-sections (*3*) and (*4*) shall be re-numbered as sub-sections (*2*) and (*3*).

Insertion of new section 64A in Act VIII of 1885.

39. After section 64 of the said Act the following shall be added, namely:—

Penalty for refusing to receive rent tendered by postal money order or deposited

"64A. If a landlord or his agent refuses without reasonable excuse to receive payment of rent remitted by postal money order or deposited in Court, he shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding 25 per cent. on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent or area of land of the holding shall not be considered a reasonable excuse under this section:

Provided that, when a landlord accepts rent, which has been deposited, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application to deposit or in the postal money order form."

Amendment of section 65 and sub-section (1) of section 66 of Act VIII of 1885

40. In section 65 of the said Act and in sub-section (1) of section 66 of the said Act after the words "raiyat holding at fixed rates" for the words "or an occupancy raiyat" the words "an occupancy raiyat or an occupancy under-raiyat" shall be substituted.

Amendment of section 66 of Act VIII of 1885

41. In section 66 of the said Act—

(a) in sub-section (1) for the words "Bengali year" the words "agricultural year" shall be substituted, and the words "where that year prevails or at the end of the month of Jeth where the Fasli or Amli year prevails" shall be omitted;

(b) in sub-sections (2) and (3) for the words "fifteen days" the words "thirty days" shall be substituted and for the word "fifteenth" in sub-section (2) the word "thirtieth" shall be substituted.

Amendment of section 67 of Act VIII of 1885

42. In section 67 of the said Act the words "or of the institution of the suit, whichever date is earlier" shall be omitted.

Amendment of section 68 of Act VIII of 1885.

43. After the proviso to sub-section (1) of section 68 of the said Act the following shall be inserted, namely:—

"Provided also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the amount shall be awarded from that date up to the date of payment."

Amendment of section 69 of Act VIII of 1885

44. In sub-section (3) of section 69 of the said Act as amended by the Bengal Tenancy (Amendment) Act, 1907, and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the portion of the sub-section after the words "has been effected" shall be omitted.

Repeal of section 73 of Act VIII of 1885

45. Section 73 of the said Act is repealed.

Amendment of section 74 of Act VIII of 1885

46. To sub-section (2) of section 74 of the said Act the following shall be added, namely:—

"and registered before the first day of November, 1922."

Amendment of sections 76 and 79 of Act VIII of 1885

47. In clause (f) of sub-section (2) of section 76 of the said Act and in section 79 of the said Act the word "suitable" shall be omitted.

Amendment of section 76 of Act VIII of 1885.

48. In section 76 of the said Act—

(a) in sub-section (1) the word "raiyat's" shall be omitted;

(*b*) to clause (*a*) of sub-section (*2*) the words "or for the purpose of providing drinking water for the tenant or his family" shall be added;

(*c*) in clause (*f*) of sub-section (*2*) after the words "the raiyat" the words "or under-raiyat" shall be inserted; and

(*d*) in sub-section (*3*) after the word "raiyat" the words "or under-raiyat" shall be inserted.

Amendment of section 77 of Act VIII of 1885.

49. In section 77 of the said Act—

(*a*) in sub-section (*1*) for the words "or has an occupancy right in his holding, neither the raiyat" the words "or where a raiyat or an under-raiyat has an occupancy right in his holding, neither the tenant" shall be substituted:

(*b*) in sub-section (*2*) for the words "the raiyat," in the two places where they occur, the words "the tenant" shall be substituted; and

(*c*) after sub-section (*2*) the following shall be added namely:—

"(*3*) Any fee realized from a tenant for permission to make any improvement shall be deemed to be an *abwab* and the provisions of sub-section (*1*) of section 74 shall apply thereto."

Amendment of section 78 of Act VIII of 1885.

50. In section 78 of the said Act for the words "the raiyat" the words "the tenant" shall be substituted.

Amendment of section 80 of Act VIII of 1885.

51. To section 80 of the said Act the following shall be added, namely:—

"Provided that the immediate landlord of an occupancy under-raiyat may apply for the registration of an improvement made in accordance with the provisions of sub-section (*1*)—

(*i*) in the case of improvements made before the day of , 192 , within twelve months from that date,

(*ii*) in the case of improvements made after that date, within twelve months from the date of the completion of the work."

Amendment of sections 82, 83, 86 and 87 of Act VIII of 1885.

52. In sections 82, 83, 86 and 87 of the said Act after the word "raiyat," wherever it occurs, the words "or under-raiyat" shall be inserted.

Amendment of section 82 of Act VIII of 1885.

53. In sub-section (*1*) of section 82 of the said Act after the words "commencement of this Act," the words "and improvements made by an occupancy under-raiyat between the first day of November, [illegible], and the day of , 192 " shall be inserted.

Amendment of section 85 of Act VIII of 1885.

54. In section 85 of the said Act—

(*a*) in sub-section (*1*) after the word "raiyat" the words "or under-raiyat" shall be inserted and the words "otherwise than by a registered instrument" shall be omitted;

(*b*) sub-sections (*2*) and (*3*) shall be omitted; and

(*c*) after sub-section (*1*) the following shall be inserted, namely:—

"Provided that any under-raiyat who holds under a lease registered before the first day of November, 1922, shall not be liable to ejectment as a result of the sale of the raiyati holding in execution of a decree for arrears of rent, unless a notice of annulment has been duly served under the provisions of section 167."

Insertion of new section 86A in Act VIII of 1885.

55. After section 86 of the said Act the following shall be inserted, namely:—

Effect of exemption from payment of rent or abatement of rent on account of diluvion.

"86A. (*1*) If—

(*i*) the lands of a tenure or holding are wholly lost by diluvion and the tenant obtains on that account exemption from payment of rent in respect of such tenure or holding,

(*ii*) any portion of the lands of a tenure or holding is lost by diluvion and the tenant obtains on that account an abatement of rent in respect of such lands,

the tenant shall, unless there is a contract to the contrary made by registered instrument, be deemed to have surrendered his right to such lands and his tenancy and rights therein shall be extinguished.

(*2*) Nothing in this section shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter re-appear as an accretion thereto.

Amendment of section 87 of Act VIII of 1885.

56. In section 87 of the said Act—

(*a*) in sub-section (*3*) after the word "compensation" the words "including the repayment of any premium paid under section 87A" shall be inserted, and to that sub-section the following shall be added, namely:—

"and, if it orders recovery of possession by the raiyat, the rights under the raiyat of any sub-lessee by whom the premium has been paid under section 87A shall also revive and his possession as sub-lessee shall continue as though there had been no abandonment;"

(*b*) in sub-section (*4*) after the word "sublet" the words "to a non-occupancy under-raiyat" shall be inserted.

Insertion of new section 87A in Act VIII of 1885.

57. After section 87 of the said Act the following shall be inserted, namely:—

"87A. (*1*) If the immediate sub-lessee of an occupancy holding, which has been surrendered or abandoned by an occupancy raiyat is an occupancy under-raiyat, and has himself or through his predecessors in interest held as an under-raiyat any of the lands of such holding since the first day of January, 1915, he shall on application to the landlord of the former raiyat within three months of the date of surrender or within three months of the date of the publication of the notice under sub-section (*2*) of section 87, as the case may be, be entitled to take the occupancy right that was enjoyed by his sub-lessor in the holding—

Power to sub-lessee to take interest of sub-lessor on surrender and abandonment.

(*i*) at the same rent as was payable by the former raiyat before the surrender or abandonment, in which case he shall pay to the landlord a premium equal to six times that rent, or

(*ii*) at the same rent as was payable by *all the sub-lessees of the holding to the raiyat* before the surrender or abandonment, in which case no premium shall be paid,

subject to the provisions contained in this Act in regard to the subsequent enhancement or reduction of such rent and provided that he pays to the landlord any arrears of rent due from the former raiyat on account of the holding.

The landlord of such sub-lessee may within one month of the date of receipt of the application under this sub-section by notice in writing elect for payment by the tenant of rent and premium under clause (*i*) or of rent under clause (*ii*). If he does not so elect, the sub-lessee shall take under whichever of those clauses he may prefer.

(*2*) If there are two or more sub-lessees of the lands of such holding, or of any portion of such lands, who have held any of such lands as under-raiyats since the first day of January, 1915, any of such sub-lessees, who shall apply within the period allowed by sub-section (*1*) and pay the premium, if any, required by the provisions of that sub-section, shall be entitled to take the holding under that sub-section as if they had been the sole sub-lessee of such holding, provided that they apply for or take a joint settlement of the entire holding with themselves and with any other sub-lessees who have applied or who may thereafter apply in accordance with the provisions of this sub-section.

(*3*) The premium payable under sub-section (*1*) may be paid or deposited in Court for payment to the landlord as though it were an arrear of rent.

(4) If, within the period allowed by sub-section (1), no application is made to the landlord in accordance with the provisions of that sub-section, or if the premium, if any, payable under that sub-section is not paid or deposited in Court within that period or within one month of the date of election by the landlord under sub-section (1), whichever is later, the landlord may, subject in the case of abandonment to the provisions of sub-section (3) of section 87, avoid the sub-lease or sub-leases and may enter on the holding and let it to another tenant or take it into cultivation himself."

Amendment of section 88 of Act VIII of 1885.

58. Section 88 of the said Act, as modified by section 18 of the Bengal Tenancy (Amendment) Act, 1907, shall be substituted for section 88, as first enacted.

Insertion of new sections 88A and 88B in Act VIII of 1885.

59. After section 88 of the said Act the following shall be inserted, namely:—

Safeguard to other co-sharer landlords against limitation of interest by a co-sharer landlord.

"88A. If any co-sharer landlord limits by contract his rights as landlord in respect of his share in a holding of which he is co-sharer landlord, such holding not having been divided in accordance with the provisions of section 88, the contract shall be void as against the other co-sharer landlords or any of them, and the lands in respect of which such contract is made shall not be deemed to form the subject of a separate tenancy by virtue of such contract to the prejudice of any such other landlords.

Illustration.

A and B are co-sharer landlords, each holding a half share in respect of a tenure. A and B jointly settle a holding with X, a raiyat. B later grants to X *mukarari* rights in respect of B's 8 annas' interest as landlord in the lands of the holding without the written consent of A. A, acting under the provisions of section 188, may sue X for enhancement of the rent of the holding on the basis of the former settlement, disregarding the subsequent grant of *mukarari* rights by B, and will get the benefit of such enhancement, if any, to the extent of half of the increased amount of the new rent over the old rent of the holding. B, being estopped by his contract, cannot take his share of the relief.

Safeguard to other co-sharer tenants against action of a co-sharer tenant rendering them liable to penalty.

"88B. If any co-sharer tenant in a tenure or holding, which has not been sub-divided in accordance with the provisions of section 88, without the written consent of all the co-sharer tenants or of their agent, duly authorized in this behalf, and not being the representative of all of them in respect of the contract or permission, grants to any

immediate under-tenant any permission to use any of the lands of the tenure or holding in a manner whereby the co-sharer tenants thereof would be liable to ejectment or any other penalty, any other of such co-sharer tenants may bring a suit or make an application in manner provided in clause (*a*) of sub-section (*1*) of section 188 for the ejectment of such under-tenant, and he shall be held to be the landlord of such under-tenant for the purpose of his ejectment and the permission granted by the co-sharer tenant shall be void for the purposes of such suit or application.

Illustration.

B and C take joint settlement of a tenure from A, a landlord, the lease providing that they shall be liable to ejectment, if the lands of the tenure are used otherwise than for agricultural purposes. C lets out certain lands of the tenure to X, a raiyat, without the written consent of B and permits X to make a brickfield on the lands, thereby rendering both B and C liable to ejectment by A. B, acting under the provisions of section 188, may sue X for ejectment, and shall be his landlord for the purposes of the suit, notwithstanding that there is no settlement between him and X, and he may eject X."

Amendment of section 93 of Act VIII of 1885.

60. In section 93 of the said Act—

(*a*) at the commencement of the section the figure and brackets "(*i*)" shall be inserted,

(*b*) after the words "co-owners of an estate or tenure" the words "or of lands held jointly between two or more estates or tenures" shall be inserted,

(*c*) after the words "injury to private rights" the words, figures and brackets "or (*ii*) where owing to the existence of a large number of small co-sharers in an estate or tenure the tenants are put to inconvenience and harassment in the payment of their rent," shall be inserted.

(*d*) before the letters and brackets "(*a*)" and "(*b*)" where they occur for the second time the figure and brackets "(*i*)" shall be inserted,

(*e*) after the words "interest in the estate or tenure" the words "or in the said lands as the case may be and in case (*ii*) on the application of more than half the tenants," shall be inserted, and

(*f*) after the words "common manager," the words "either for the whole of the estate or tenure or estates or tenures as the case may be, or for those portions of the estate or tenure or estates or tenures as the case may be which are affected by the dispute, or for the estate or tenure in which the tenants are put to inconvenience or harassment as aforesaid" shall be inserted.

Amendment of section 95 of Act VIII of 1885.

61. For clause (*b*) of section 95 of the said Act the following shall be substituted, namely :—

"(*b*) direct the Collector to appoint a manager."

Amendment of section 96 of Act VIII of 1885.

61A. In section 96 of the said Act for the words "District Judge" and "Judge" the word "Collector" shall be substituted.

Amendment of section 98 of Act VIII of 1885.

62. In section 98 of the said Act—

(*a*) for the words "District Judge" in the seven places where they occur the word "Collector" shall be substituted ; and

(*b*) in sub-section (*7*) after the words and figures "section 103" the words, figures and letter "or section 158A" shall be inserted.

Insertion of new section 99A in Act VIII of 1885

63. After section 99 of the said Act the following shall be added, namely :—

"99A. (*1*) Where two or more persons are co-sharer landlords, they shall, within six months of the commencement of the Bengal Tenancy (Amendment) Act, 192 , or, in cases to which this section becomes applicable only after that date, within six months of the date on which the rent so becomes payable to more than one person, appoint a common agent for the whole of their joint property or a common agent for each portion thereof to receive on behalf of all of them notices of transfers under sections 12, 13, 15, 18, 26B to 26J and 18A of tenures or holdings or portions or shares thereof held under them, and the fees payable in respect of such transfers shall be paid to the common agent for the area in which the tenure or holding transferred is situated and his receipt shall be deemed to be a full acquittance for the same.

Appointment of common agent in respect of transfer fees, and if so empowered, to receive rent.

(*2*) The name and address of the common agent for the area in which the tenure or holding is situated shall be entered upon the receipts required under section 56 to be given on the payment of rent for the tenure or holding.

(*3*) If no such common agent has been appointed or if after the appointment of such common agent rent has been paid, but the name and address of the common agent have not been entered upon the rent receipts, no Court shall entertain a suit for the recovery of the fees payable in respect of the transfer of the tenure or holding until such common agent is appointed, and the landlords shall not recover interest, damages or costs in respect of any such fees which may have accrued in respect of such lands—

(*i*) between the date on which the common agent should have been, and the date on which he was appointed, and

(*ii*) during any period in respect of which it is proved that a receipt has been granted on which the name and address of the common agent have not been entered.

(*4*) If the co-sharer landlords are unable to agree as to the common agent to be appointed, or fail to appoint him within the period fixed by sub-section (*1*), any of them may apply to the Collector to appoint on behalf of the landlords a common agent, and, after giving to the landlords an opportunity to show cause, the Collector may appoint a common agent, and such common agent shall be deemed to have been appointed by all such landlords.

(*5*) When a common agent is appointed under this section, or at any time after such appointment, the landlords may authorize the common agent to receive rents on their behalf, and the fact that he is so authorized shall thereafter be noted against the name of the common agent on all the rent receipts given on behalf of such landlords in respect of tenancies within the area for which he is appointed, and if such note is not so made, the provisions of sub-section (*3*) shall apply in respect of the recovery by such landlords of interest, damages and costs on arrears of rent and dues recoverable as such.

(*6*) Where a common agent has been authorized under sub-section (*5*) to receive rents, no application by the tenants for the appointment of a common manager on the ground specified in case (*ii*) in section 93 shall lie.

(*7*) The appointment under sub-section (*1*) of a common agent and the authorization under sub-section (*5*) of a common agent to receive rents shall be made by instrument in writing and, where the rent roll of the tenancy or tenancies for that portion of the joint property for which the common agent is appointed exceeds rupees one hundred, the appointment or authorization shall be made by registered instrument."

Amendment of section 100 of Act VIII of 1885.

64. In section 100 of the said Act—

(*a*) for the words "High Court" the words "Board of Revenue" shall be substituted, and

(*b*) after the words "managers" the words "and common agents" shall be inserted.

Amendment of section 101 of Act VIII of 1885.

65. In clause (*c*) of sub-section (*2*) of section 101 of the said Act for the words "District Judge" the word "Collector" shall be substituted.

Amendment of section 102 of Act VIII of 1885.

66. In clause (*b*) of section 102 of the said Act after the word "class" the words "or classes" shall be inserted, and for the words "or under-raiyat" the comma and words ", occupancy under raiyat or non-occupancy under-raiyat" shall be substituted.

Amendment of section 103B of Act VIII of 1885.

67. For section 103B of the said Act, as inserted by section 22 of the Bengal Tenancy (Amendment) Act, 1907, section 103B of the said Act, as inserted by section 21 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 104H of Act VIII of 1885.

68. In sub-section (*3*) of section 104H of the said Act for clause (*g*), as modified by section 25 of the Bengal Tenancy (Amendment) Act, 1907, clause (*g*), as enacted by the Bengal Tenancy Act, 1885, and clause (*h*), as inserted by section 24 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 105 of Act VIII of 1885.

69. (*1*) In sub-sections (*1*) and (*2*) of section 105 of the said Act, as modified by sections 23 (*1*) and 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and by the Devolution Act, 1920, for the words "two months" the words "four months" shall be substituted.

(*2*) The said section 105 as so modified shall be substituted for section 105, as modified by section 21 (*1*) of the Bengal Tenancy (Amendment) Act, 1907, and by the Devolution Act 1920.

Amendment of section 105A of Act VIII of 1885

70. In section 105A of the said Act after clause (*f*) the following shall be inserted, namely:—

"(*g*) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what the rent payable at that time was."

Insertion of new sections 105B and 105C in Act VIII of 1885.

71. After section 105A of the said Act the following shall be inserted, namely:—

Higher court-fees to be paid in certain cases in proceedings under section 105.

"105B. When any issue is raised under section 105A, the party raising it shall pay, in addition to court-fees under section 105, such court-fees as he would have had to pay if he had claimed relief under section 106.

Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer.

105C. Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105."

Amendment of section 106 of Act VIII of 1885.

72. (*1*) Section 106 of the said Act, as substituted by the Bengal Tenancy (Validation and Amendment) Act, 1903, shall be re-numbered as section 106 (*1*), and in that sub-section, as re-numbered, and in sub-section (*1*) of section 106 of the said Act, as re-numbered by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words "three months" the words "four months" shall be substituted.

(*2*) To section 106 (*1*) of the said Act, as re-numbered by sub-section (*1*), sub-section (*2*) of section 106 of the said Act, as inserted by sub-section (*3*) of section 27 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be added.

Amendment of sections 107 and 108 of Act VIII of 1885

72A. In sections 107 and 108 of the said Act for the figures and letter "109A" where they occur, the figures and letter "115C" shall be substituted.

Amendment of sections 108 and 115B of Act VIII of 1885.

73. In section 108 of the said Act and in section 115B of the said Act, as re-numbered by section 74, for the words "is pending" the words "has been filed" shall be substituted.

Re-numbering of section 108A of Act VIII of 1885 as section 115B and amendment of that section.

74. Section 108A of the said Act shall be transferred to Part IV of Chapter X and shall be re-numbered 115B, and in that section, as re-numbered, for the figures and letter "109A" the figures and letter "115C" and for the words "twelve months" the words "two years" shall be substituted.

Amendment of section 109 of Act VIII of 1885.

75. In section 109 of the said Act—

(*i*) for the figures and letter "109A" the figures and letter "115C" shall be substituted, and

(*ii*) after the words "both inclusive" the following shall be added namely:—

"Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, which application or suit has been withdrawn with or without liberty to make a fresh application or to file a fresh suit, as the case may be, or concerning any matter which has not been finally adjudicated upon in any such proceeding or suit."

Amendment of section 109A of Act VIII of 1885.

76. (*1*) Section 109A of the said Act shall be transferred to Part IV of Chapter X and shall be re-numbered section 115C.

(*2*) In sub-section (*1*) of that section, as re-numbered, after the word "under" the word, figures and comma "section 40," and after the word "inclusive" the words figures and letter "and section 115B" shall be inserted.

(*3*) In sub-section (*2*) of that section, as re-numbered, for the words, figures and letter "105 to 108A, both included" the words, figures and letter "105 to 108, both inclusive, and section 115B" shall be substituted.

(*4*) After sub-section (*2*) of that section, as re-numbered, the following shall be added, namely:—

"(*2a*) No appeal shall lie against the order of a Revenue-officer refusing to exercise his powers of revision under section 108, or from the order of a superior Revenue-officer refusing to revise an order passed under section 115B, and no appeal shall lie to the Special Judge from any order passed under Part II of this Chapter."

Amendment of section 109B of Act VIII of 1885

77. Section 109B of the said Act, as inserted by section 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted for section 109B of the said Act, as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 109C of Act VIII of 1885.

78. (*1*) In sub-section (*1*) of section 109C of the said Act, as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907, the words "specially empowered in this behalf by the Local Government" shall be omitted.

(2) The said sub-section 109C, as so modified, shall also be inserted after section 109B of the said Act, as inserted by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

Amendment of section 107 of Act VIII of 1885 and substitution of new section 109D for sections 109C and 109D of Act VIII of 1885.

79. For sub-section (2) of section 107 of the said Act, as inserted by section 28(b) of the Bengal Tenancy (Amendment) Act, 1907, and section 109D, as inserted by section 33 of the same Act, and for sub-section (2) of section 107, as inserted by section 28(b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and section 109C, as inserted by section 33 of the same Act, the following shall be substituted, namely :—

Note of decisions on record.

"109D. A note of all rents commuted under section 40 in the course of proceedings under this Chapter, of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C shall be made in, or appended to, the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record."

Amendment of section 110 of Act VIII of 1885.

80. In section 110 of the said Act for the words "settlement rent-roll" the words "record-of-rights" shall be substituted.

Amendment of section 111B of Act VIII of 1885.

81. (1) In sub-sections (1) and (4) of section 111B of the said Act, as inserted by section 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, for the words "three months" the words "four months" shall be substituted.

(2) The said section 111B as so modified shall be substituted for section 111B of the said Act, as inserted by section 35 of the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 112 of Act VIII of 1885.

82. In section 112 of the said Act—

(1) In sub-section (1), for the portion commencing with the words "or that any landlord is demanding," and ending with the words "a Revenue-officer," as inserted by section 36 (1) of the Bengal Tenancy (Amendment) Act, 1907, the corresponding portion, as inserted by section 36 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted ; and

(2) After sub-section (2a) as inserted by section 36(2) of the Bengal Tenancy (Amendment) Act, 1907, and after sub-section (2a), as inserted by section 36 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be added, namely :—

"(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when

a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed."

Amendment of section 113 of Act VIII of 1885.

83. In sub-section *(1)* of section 113 of the said Act the words "or the holding of an under-raiyat having occupancy rights" and the words "or the holding of an under-raiyat not having occupancy rights" shall be omitted.

Repeal of section 115 of Act VIII of 1885.

84. Section 115 of the said Act is repealed.

Amendment of section 115A of Act VIII of 1885.

85. For section 115A of the said Act, as inserted by section 38 of the Bengal Tenancy (Amendment) Act, 1907, section 115A of the said Act, as inserted by section 38 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 116 of Act VIII of 1885.

86. In section 116 of the said Act—

(*a*) After the words "*Railway Company*," where they occur for the second time, the words "or to lands belonging to the Government or to any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same," shall be inserted, and

(*b*) For the words "known in Bengal as *khamar*, *nij* or *nij-jot*, and in Bihar as *ziraat*, *nij*, *sir* or *khamat*" the words "known as *khamar*, *nij*, *nij-jot*, *zirat*, *sir* or *khamat*" shall be substituted.

Amendment of section 120 of Act VIII of 1885.

87. In section 120 of the said Act for the word "*kamat*" in the two places where it occurs the word "*khamat*" shall be substituted.

Repeal of sections 121 to 142 of Act VIII of 1885.

88. Sections 121 to 142 of the said Act are repealed.

Amendment of section 144 of Act VIII of 1885.

89. In section 144 of the said Act—

(*a*) To sub-section *(1)* the following shall be added, namely :—

"and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated."

(*b*) After sub-section *(1)* the following shall be added, namely :—

"(*2*) A landlord may institute one suit in respect of the rent of more than one tenancy, if the entire tenancies, in respect of the rent of

which the suit is brought, are held in similar right and equal status by the same tenant under him:

Provided that—

(*i*) the claim in respect of each tenancy shall be stated separately in the plaint;

(*ii*) separate decrees shall be made in respect of each tenancy;

(*iii*) the costs of the suit shall be apportioned by the Court in respect of each tenancy, and

(*iv*) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy;"

(*c*) sub-section (*2*) shall be re-numbered as sub-section (*3*).

Insertion of new sections 146A and 146B in Act VIII of 1885.

90. After section 146 of the said Act the following shall be added, namely:—

"146A. Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the holding whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest.

Joint and several liability for rent of co-sharer tenants in a holding.

"146B. (*1*) Notwithstanding anything contained in the Indian Limitation Act 1908, any person who claims that he should have been joined as a co-tenant defendant in a suit for the recovery of arrears of rent due in respect of a holding may at any time before the hearing of the suit has been completed apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant.

Procedure in rent suit against co-sharer tenants in a holding.

(*2*) Notwithstanding anything contained in sub-section (*3*), any person, who should have been joined as a co-tenant defendant if he had applied in accordance with the provisions of sub-section (*1*), shall be deemed to be entitled to pay into Court, when the holding has been advertised for sale in execution of the decree, the amount requisite to prevent the sale, and he shall thereafter have the rights conferred by clauses (*a*), (*b*) and (*c*) of section 171 in respect of the payment so made.

(*3*) If the Court finds in delivering judgment or at any stage in the proceedings after the decree has been passed (including proceedings after confirmation of the sale), or in a suit to set aside the sale, that a person or persons in possession of a portion or a share

in the holding should have been, but have not been, made parties defendant to the suit, and that the portion or share of the holding held by those persons comprises more than one-fourth of the entire interest of the whole body of co-tenants therein, the decree for rent and sale in execution of that decree shall have the effect of a decree in a suit for money and of a sale in execution of a decree in such a suit, and shall be binding only on those co-tenants who have been made parties defendant to the suit. In the absence of such finding or proof, notwithstanding anything contained elsewhere in this Act or in any other law, the decree for rent and the sale in execution thereof shall be valid also against the holding; and, subject to the provisions of section 158B, the holding shall pass to the auction-purchaser in the manner provided in Chapter XIV:

Provided that, unless the decree has been found under this sub-section to have the effect of a decree in a suit for money, any co-tenant or co-tenants who should have been, but have not been, made parties defendant to the suit, shall be entitled to obtain from the auction-purchaser or his successors in interest, as the case may be, money compensation to the extent of their portion or share of the holding taken at its full market value. Such persons may apply to the Court by which the decree has been passed to fix the amount of compensation at any time within six months of the date of sale, or may thereafter bring a suit to obtain the compensation. An order of the Court passed on an application so made shall have the force and effect of a decree, and any co-tenants who have been awarded such compensation shall be deemed to have been duly made parties to the suit for the purpose of computing the amount of the interest in the holding held by co-tenants who have been made parties.

(4) Notwithstanding anything contained in sub-section (3), a decree for arrears of rent of a holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in manner provided in Chapter XIV, if it is proved that the defendants to the suit represented the entire body of co-sharer co-tenants in the holding, for the rent of which the suit was brought, and the provisions contained in sub-section (3) and the proviso thereto shall not apply to such decree."

Amendment of section 147 of Act VIII of 1885.

91. To section 147 the following shall be added, namely:—

"Provided that nothing contained in this section or in rule 2 in Order II in the First Schedule to the Code of Civil Procedure, 1908, shall apply to the recovery of a landlord's fee for the transfer of a tenure or holding, or shall prevent a landlord from recovering the same by separate suit".

Amendment of section 147A of Act VIII of 1885.

92. (*1*) In section 147A of the said Act, as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908,

(*a*) for the words and figures "section 373 of the Code of Civil Procedure" the words and figures "rule 1 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908" shall be substituted, and

(*b*) after the words "the Court", where they occur for the first time, the words "shall not order an agreement or compromise to be recorded and" shall be inserted.

(*2*) The said section, as so amended, shall be renumbered as sub-section (*1*) of section 147A.

(*3*) (*a*) After that sub-section as re-numbered, sub-section (*4*) of section 147A of the said Act, as inserted by the Bengal Tenancy (Amendment) Act, 1907, with the illustration thereto, shall be inserted as sub-section (*2*).

(*b*) In the illustration aforesaid for the words and figures "sub-section (*4*)" the words "this sub-section" shall be substituted.

(*4*) Section 147A of the said Act, as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and as modified by sub-sections (*1*), (*2*) and (*3*) of this section, shall be substituted for section 147A, as inserted by the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 148 of Act VIII of 1885

93. In section 148 of the said Act—

(*a*) for clause (*a*) the following shall be substituted, namely:—

"(*a*) sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 in Order XI, rule 83 in Order XXI and rule 2 in Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code, shall not apply to any such suit;"

(*b*) in clause (*b*)—

(*i*) for the words and figures "section 50 of the Code of Civil Procedure" the words and figures "rules 1, 2, 4, 5 and 6 and sub-rule (2) in rule 9 in Order VII in Schedule I to the Code of Civil Procedure, 1908", shall be substituted, and

(*ii*) after the words "sufficient for identification" the words "and the plaint shall further contain a statement as to whether a record-of-rights has been prepared and finally published in respect of such land" shall be inserted:

(*c*) for the second proviso to clause (*b1*) as inserted by section 43 (*1*) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, the following shall be substituted, namely:—

"Provided also that, when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant as prescribed by clause (*b*) shall be required;"

(*d*) the said clause (*b1*), as so modified, shall be substituted for clause (*b1*) as inserted by section 43 (*1*) of the Bengal Tenancy (Amendment) Act, 1907;

(*e*) to clause (*c*) the following shall be added, namely:—

"and it shall contain a concise statement of the facts alleged in the plaint, and shall be in the prescribed form, and, notwithstanding anything contained in rule 2 in Order V in Schedule I to the Code of Civil Procedure, 1908, it shall not be necessary to serve on the defendant any copy of the plaint;"

(*f*) for clause (*d*) the following shall be substituted namely:—

"(*d*) (*i*) the service of the summons may be effected either in addition to, or, in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898;

(*ii*) when a summons is so forwarded and it is proved that the letter was duly registered, the Court may presume that the summons has been duly served at the time at which it would have been delivered in the ordinary course of post;

(*iii*) when the summons is issued by registered post in the manner provided in sub-clause (*i*) it may be issued simultaneously by ordinary post, a certificate of posting being obtained:"

(*g*) after clause (*d*) the following shall be inserted, namely:—

"(*dd*) Notwithstanding anything contained in rule 4(3) in Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of compliance with such notice, such natural guardian shall, unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit;"

(*h*) to clause (*e*) the following shall be added, namely:—

"but the Court shall record its reasons for granting or refusing such leave;"

(*i*) in clause (*f*) for the words and figures "section 189 of the Code of Civil Procedure" the words and figures "rule 13 in Order XVIII in Schedule 1 to the Code of Civil Procedure, 1908," shall be substituted;

(*j*) after clause (*f*) the following shall be inserted, namely:—

"(*f a*) on or before the date of hearing, the plaintiff may file an affidavit in proof of the facts stated in the plaint, and, notwithstanding anything contained in the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908, or in any rules made thereunder, such affidavit may be used by the Court as evidence in the suit, and further the Court may accept one affidavit for all the cases brought by one plaintiff which come up for hearing on the same day;"

(*k*) (*a*) in clause (*ff*), as inserted by section 43(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908,—

(*i*) for the words "the landlord" in the first place where they occur the words "a party" and in the second place where they occur the words "the party" shall be substituted;

(*ii*) after the words "such documents" the words "may be" and after the words "copies or extracts", the words "without the payment of any court-fee, and such copies or extracts" shall be inserted;

(*b*) the said clause, as so modified, shall be substituted for clause (*ff*) as inserted by section 43 (*2*) of the Bengal Tenancy (Amendment) Act, 1907; and

(*l*) in clause (*h*) for the words and figures "section 232 of the Code of Civil Procedure" the words and figures "rule 16 in Order XXI in Schedule I to the Code of Civil Procedure, 1908" shall be substituted.

Substitution of new section for section 148A of Act VIII of 1885.

94. For section 148A of the said Act the following shall be substituted, namely:—

Power to co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.

"148A. (*1*) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

(*2*) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in

respect of the tenure or holding up to the date of the institution of the suit.

(3) On the date named in the summons as the date on which he is called on to appear or on any subsequent date fixed by the Court in this behalf any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the prescribed court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of all rent due to him up to the date of the institution of the suit.

(4) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding, the suit shall be consolidated with that brought by the plaintiff under this section and he shall be deemed to be a co-plaintiff in the suit brought under this section and he shall be permitted to amend his claim so as to include all rent due to him up to the date of the institution of the suit, and any claim for rent made by him subsequent to that date shall be expunged from the plaint and may be recovered under the provisions of clause (c) of sub-section (7) or under sub-section (9), as the case may be

(5) The Court, when satisfied that summons has been served on all the defendants, shall, after taking such action, if any, as may be required under sub-sections (3) and (4) in view of applications received under those sub-sections, proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed by the plaintiff or plaintiffs, as the case may be, in a suit brought in accordance with the provisions of this section shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(7) (i) In disposing of the proceeds of the sale in execution of a decree passed under this section, the following rules, instead of those prescribed by section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say:—

(a) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale;

(b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within

one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application.

(ii) If the judgment-debtor disputes the decree-holder's or the co-sharer landlord defendant's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

(8) When a suit has been instituted under the provisions of this section, no co-sharer landlord, who has been made a party defendant thereto, shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto, except by means of a suit for money brought under the Code of Civil Procedure, 1908:

Provided that, where a suit brought under this section has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities provided by this section shall, subject to the law of limitation, again apply to such fresh suit when instituted and to the parties thereto.

(9) Nothing contained in rule 2 in Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined under sub-section (3) as plaintiff in a suit brought under, or consolidated in accordance with, the provisions of this section from recovering by suit, in the event of the holding or tenure not being sold as a result of the suit brought under this section, rent and interest due to him and damages, if awarded, in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

(10) A suit brought in accordance with the provisions of this section shall for the purposes of section 146B be deemed to be a suit brought for the recovery of arrears of rent due in respect of a holding."

Amendment of section 153 of Act VIII of 1885.

95. In section 153 of the said Act—

(a) after the words "recovery of rent where" the words "the decree or order is passed by any District Judge, Additional Judge, or Subordinate Judge or by any judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section and the amount claimed in the suit including interest or damages under section 67 or section 68 does not exceed one hundred rupees" shall be

(*b*) clauses (*a*) and (*b*) up to and including the words "fifty rupees" shall be omitted;

(*c*) after the proviso to that section the following shall be inserted, namely :—

"Provided also that a decision of a question relating to title to land made in a rent-suit, from the decree or order in which no appeal lies, shall not be deemed to bar the consideration and decision of the same question in a subsequent title-suit.".

Amendment of section 156 of Act VIII of 1885.

96. In section 156 of the said Act after the word "raiyat" wherever it occurs the words "or under-raiyat" shall be inserted.

Amendment of section 158 of Act VIII of 1885.

97. In clause (*c*) of sub-section (*1*) of section 158 of the said Act after the word "class" the words "or classes" shall be inserted and for the words "or under-raiyat" the words "occupancy under-raiyat or non-occupancy under-raiyat" shall be substituted.

Amendment of section 158A of Act VIII of 1885.

98. In section 158A of the said Act—

(*a*) in sub-section (*1*) the words "and in which such record is maintained" shall be omitted;

(*b*) in sub-section (*2*) after the words "Local Government" the words "after considering the manner in which the landlord maintains his record, and after ascertaining in such manner as it thinks fit the views of the tenants" shall be inserted.

Amendment of section 158B of Act VIII of 1885.

99. In sub-clause (*iii*) of sub-section (*1*) of section 158B of the said Act for the words "to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit" the words "in respect of a tenure or holding in manner provided in section 148A" shall be substituted.

Amendment of section 159 of Act VIII of 1885.

100. Section 159 of the said Act shall be re-numbered as sub-section (*1*) of section 159 and to that sub-section as re-numbered the following shall be added, namely :—

"(*2*) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchaser shall take with effect from the date of confirmation of the sale."

Amendment of section 160 of Act VIII of 1885.

101. (*1*) Section 160 of the said Act shall be re-numbered as section 160 (*1*)

(*2*) After that sub-section as re-numbered the following shall be added, namely :—

"(*2*) The right of a raiyat at fixed rates having a right of occupancy in the lands of a holding to continue to hold at such rates shall not be deemed to be a protected interest under sub-section (*1*), but such raiyat shall continue to hold the lands on payment of rent at the rate paid by occupancy raiyats not holding at fixed rates for land of a similar description with similar advantages in the same village, or at such other rate as may be deemed to be fair and equitable by a Court".

Amendment of section 161 of Act VIII of 1885.

102. In clause (*a*) of section 161 of the said Act for the words "the last foregoing section" the words "section 160, but does not include any right arising merely by reason of adverse possession" shall be substituted.

Amendment of section 163 of Act VIII of 1885.

103. In section 163 of the said Act—

(*a*) for sub-section (*1*) the following shall be substituted, namely:—

"(*1*) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court shall, if under rule 17 in Order XXI in Schedule I to the said Code it admits the application and orders execution of the decree as applied for, issue a combined order of attachment and proclamation in the prescribed form."

(*b*) in sub-section (*2*) for the words and figures "section 287 of the said Code" the words and figures "rule 66 in Order XXI in Schedule I to the said Code" shall be substituted, and after the words "occupancy holding" the words "not held at fixed rates" shall be inserted.

(*c*) for sub-section (*3*) the following shall be substituted, namely:—

"(*3*) Notwithstanding anything contained in sub-rules (*1*) and (*2*) of rule 67 in Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner—

(*a*) by proclamation by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,

(*b*) by affixing a copy thereof in a conspicuous place at the Court-house of the issuing Court,

(*c*) by sending a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation in the prescribed form by registered post to the judgment-debtor, and

(*d*) in such other manner, if any, as the Local Government may by rule direct."

(*d*) in sub-section (*4*) for the words and figures "section 290 of the said Code" the words and figures "rule 68 in Order XXI in Schedule I to the said Code" shall be substituted.

Amendment of section 166 of Act VIII of 1885

104. In section 166 of the said Act after the words "occupancy holding" the words "not held at fixed rates" shall be inserted.

Amendment of section 167 of Act VIII of 1885.

105. In section 167 of the said Act—

(*a*) in sub-section (*1*) after the words "within one year from the date of the" the words "confirmation of the" shall be inserted, and

(*b*) in sub-sections (*1*) and (*3*) after the word "Collector" the words "or Subdivisional Officer" shall be inserted.

Amendment of section 169 of Act VIII of 1885.

106. In section 169 of the said Act—

(*a*) in sub-section (*1*) after the words "under this chapter" the words "other than a sale in execution of a decree passed under section 148A" shall be inserted;

(*b*) in clause (*c*) after the word "therefrom" the words "the costs of the application under this section and" shall be inserted; and

(*c*) the proviso to the sub-section shall be omitted.

Amendment of section 170 of Act VIII of 1885.

107. Section 170 of the said Act, as modified by section 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted for section 170, as modified by section 54 of the Bengal Tenancy (Amendment) Act, 1907.

Amendment of section 175 of Act VIII of 1885

108. In section 175 of the said Act, for the figures "1877" the figures "1908" shall be substituted.

Amendment of section 178 of Act VIII of 1885.

109. In section 178 of the said Act—

(*a*) after clause (*d*) of sub-section (*1*) the following shall be added, namely:—

"or

(*e*) shall entitle a landlord to recover from a raiyat or under-raiyat, as rent, produce in excess of half the gross produce of the holding, or

(*f*) shall, save as is provided in section 48, take away or limit the occupancy right of an under-raiyat as against his immediate landlord, or

(*g*) shall take away or limit the right of an occupancy raiyat or an occupancy under-raiyat to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to 26J of this Act, or

(*h*) shall take away or limit the rights of occupancy raiyats and occupancy under-raiyats in trees on their holdings, as provided in section 23A, and"

(*b*) in sub-section (*3*)—

(*i*) in clauses (*a*), (*c*) and (*f*) after the word "raiyat" the words "or under-raiyat" and in clauses (*b*) and (*e*) after the words "occupancy raiyat" the words "or occupancy under-raiyat" shall be inserted, and

(*ii*) clause (*d*) shall be omitted.

Amendment of section 179 of Act VIII of 1885.

110. To section 179 of the said Act the following shall be added, namely:—

"Provided that nothing contained in any contract made after the first day of November 1922, shall make it legal to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (*3*) of section 77."

Substitution of new section for section 182 of Act VIII of 1885.

111. For section 182 of the said Act the following shall be substituted, namely:—

"182. The homesteads of raiyats and under-raiyats shall be governed by the provisions of this Act applicable to their holdings:

Homesteads.

Provided that a person owning or occupying a dwelling-house or other building, or having any other interest therein but not holding land as a raiyat or under-raiyat, shall not obtain any rights under this section in the dwelling-house or building which he so owns, or occupies or in which he is so interested, or in the lands or out-buildings immediately appertaining thereto, or in the sites of such dwelling-house or out-buildings, if he subsequently acquires a right to hold land as a raiyat or under-raiyat."

Amendment of section 183 of Act VIII of 1885.

112. The illustrations to section 183 of the said Act shall be omitted.

Insertion of new Chapter XVA in Act VIII of 1885

113. After section 183 of the said Act the following shall be inserted, namely:—

"CHAPTER XVA.

Hybrid tenures.

"183A. Where a tenure-holder, himself or through his predecessors in interest, has been in continuous possession of a tenure in the district of Rangpur since the fourteenth day of March, 1885, or any date previous thereto, such tenure shall be deemed to be a permanent tenure, notwithstanding the terms of the contract by which the tenure was created, or any subsequent contract, lease or settlement of the lands within the tenure, and notwithstanding any portion of such lands having been separated from the other lands which formed with them a separate tenure, or amalgamated with other lands into one tenancy, and such tenure shall include any lands added thereto:

Special provisions for certain classes of tenancies in Rangpur and elsewhere

Provided that unless such tenure is a permanent tenure in virtue of the terms of any contract or settlement made in respect thereof —

(*i*) the provisions of sections 26A to 26H and of section 26K shall, and

(*ii*) the provisions of sections 12 to 17 shall not

apply to transfers of any such tenures except in so far as the provisions of sections 26D and 26F in regard to the amount of landlords' fee payable on transfer of any such tenure are modified by any contract subsisting on the first day of November 1922;

and any suit or proceeding for the ejectment of such tenure-holder as a temporary tenure-holder instituted after the first day of November 1922 or pending on that date shall be null and void.

(2) The Local Government may by notification in the *Calcutta Gazette* declare the provisions of this chapter to apply also to tenures of any class or description in areas in Bengal, other than Rangpur, as specified in such notification, and such tenures in such areas shall thereafter be deemed to be permanent tenures of the nature described in sub-section (1) from the date of such notification."

Substitution of new section for section 185 of Act VIII of 1885.

114. For section 185 of the said Act the following shall be substituted, namely :—

Portions of the Indian Limitation Act not applicable to such suits, etc.

"185. (1) Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not apply to the suits and applications mentioned in section 184.

(2) Subject to the provisions of this chapter, the remaining provisions of the Indian Limitation Act, 1908, shall apply to all suits, appeals and applications mentioned in section 184."

Substitution of new section for section 188 of Act VIII of 1885.

115. For section 188 of the said Act the following shall be substituted, namely :—

Action must be taken collectively by co-sharer landlords or by their common agents except in certain cases.

"188. (1) Subject to the provisions of section 148A where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together or by an agent authorized to act on behalf of both or all of them, with the following exceptions :—

(a) One or more co-sharer landlords may—

(i) bring a suit for ejectment of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (a), clause (b) or clause (c) of section 44, or in accordance with the provisions of section 49 or section 66,

(ii) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,

(iii) file an application under section 105,

(iv) apply for the determination of the incidents of a tenancy under section 158 :

Provided that all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants.

(*b*) Any one or more co-sharer landlords may—

(*i*) apply to the Collector for appraisement or division under section 69,

(*ii*) make applications as regards improvements under sections 78, 79, 80 and 81,

(*iii*) apply for measurement under sections 90 and 91,

(*iv*) bring a suit under section 106,

(*v*) apply for record of private lands under section 118,

(*vi*) apply to the Collector for a declaration under section 180 (*3*):

Provided the remaining co-sharer landlords are made parties defendant to the suit or proceeding.

(2) Any decree or order which is passed in a suit or proceeding in which the conditions set forth in clause (*a*) or clause (*b*) of sub-section (*1*) as the case may be, are complied with, shall have the effect of a decree passed or order made, on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding,as the case may be:

Provided that where a suit is brought under section 7 or section 30 for enhancement of rent, or under section 52 for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled, shall distribute any addition or reduction made in the same between the co-sharer landlords of the tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal application or suit in regard to the orders passed, they shall be deemed to have sued or applied under clause (*a*) of sub-section (*1*) together with the co-sharer plaintiffs or applicants."

Amendment of section 188A of Act VIII of 1885.

116. For section 188A of the said Act, as inserted by the Bengal Tenancy (Amendment) Act, 1907, section 188A of the said Act, as inserted by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be substituted.

Amendment of section 195 of Act VIII of 1885

117. For clause (*e*) of section 195 of the said Act the following shall be substituted, namely :—

"(*e*) any enactment relating to patni-tenures in so far as it relates to those tenures, except that the expression *khudkast* raiyat or resident and hereditary cultivator in sub-section (*3*) of section 11 of the Patni Taluqs Regulation (VIII of 1819) shall be deemed to include all raiyats having a right of occupancy, or"

Formal amendments in Act VIII of 1885.

118. For the references to foregoing sections or sub-sections, where they occur in the sections set forth as items in the second column of the Table annexed to this section, the words and figures entered in the fourth column against those items shall be substituted—

TABLE.

Item No.	Section in which the change is to be made.	Words to be deleted.	Words and figures to be substituted.
1	Section 17 ...	"the foregoing sections."	"sections 12 to 16."
2	" 21 ...	"the last foregoing section."	"section 20."
3	" 35 ...	"the foregoing sections."	"sections 30 to 34."
4	" 59 ...	"the foregoing sections."	"sections 56 to 58."
5	" 62 ...	"the last foregoing section."	"section 61."
6	" 64 ...	"the foregoing sections."	"section 62 or 63."
7	" 70 ...	"the last foregoing section."	"section 69."
8	" 83 ...	"the last foregoing section."	"section 82."
9	" 86 ...	"the last foregoing sub-section."	"sub-section (6)."
10	" 91 ...	"the last foregoing section."	"section 90."
11	" 94 ...	"the last foregoing section."	"section 93."
12	" 95 ...	"the last foregoing section."	"section 94."
13	" 96 ...	"the last foregoing section."	"section 95."
14	" 100 ...	"the foregoing sections."	"sections 95 to 99."

Item No.	Section in which the change is to be made.	Words to be deleted.	Words and figures to be substituted.
15	Section 117 ...	"the last foregoing section."	"section 116."
16	" 119 ...	"either of the two last foregoing sections."	"section 117 or 118."
17	" 151 ...	"either of the two last foregoing sections."	"section 149 or 150."
18	" 164 ...	"the last foregoing section."	"section 163."
19	" 165 ...	"the last foregoing section."	"section 164."

Formal amendments in Act VIII of 1885.

119. For the references to the Code of Civil Procedure mentioned in the third column of the Table annexed to this section, where they occur in the sections of the said Act set forth as items in the second column of the same Table, the words, letters and figures set forth in the fourth column thereof shall be substituted.

TABLE.

Item No.	Section of the Bengal Tenancy Act, 1885, in which the change is to be made.	Reference to the Code of Civil Procedure which is to be deleted.	Reference to the Code of Civil Procedure, 1908, or the Bengal Tenancy Act, 1885, which is to be substituted.
1	Section 31, clause (*b*).	"chapter XXV of the Code of Civil Procedure."	"Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908."
2	Ditto ...	"section 392 of the said Code."	"rule 9 in Order XXVI in Schedule I to the said Code."
3	Section 37, sub-section (*2*).	"section 373 of the Code of Civil Procedure."	"rule 1 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908."
4	Section 58, sub-section (*3*).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
5	Section 61, sub-section (*2*).	"section 52 of the Code of Civil Procedure."	"sub-rules (*2*) and (*3*) in rule 15 in Order VI in Schedule I to the Code of Civil Procedure, 1908."
6	Section 107, sub-section (*1*).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
7	Section 109A, sub-section (*2*).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
8	Section 109A, sub-section (*3*).	"chapter XLII of the Code of Civil Procedure."	"sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to, the Code of Civil Procedure, 1908."
9	Ditto ...	"the first section of that chapter."	"section 100 of that Code."

Item No.	Section of the Bengal Tenancy Act, 1885, in which the change is to be made.	Reference to the Code of Civil Procedure which is to be deleted.	Reference to the Code of Civil Procedure, 1908, or the Bengal Tenancy Act, 1885, which is to be substituted.
10	Section 143, sub-sections (1) and (2).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
11	Section 144, sub-section (1).	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
12	Section 145 ...	"the Code of Civil Procedure."	"the Code of Civil Procedure, 1908."
13	Section 146 ...	(a) "referred to in section 58 of the Code of Civil Procedure."	"mentioned in rule 1 in Order VII in Schedule I to the Code of Civil Procedure, 1908."
		(b) "that section"	"rule 2 in Order IV in Schedule I to the said Code."
14	Section 147 ...	"section 373 of the Code of Civil Procedure."	"rule 1 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908."
15	Section 153A ...	"section 108 of the Code of Civil Procedure."	"rule 13 in Order IX in Schedule I to the Code of Civil Procedure, 1908."
16	Ditto ...	"section 623 of the said Code."	"section 114 and rule 1 in Order XLVII in Schedule I to the said Code."
17	Section 158, sub-section (2).	"chapter XXV of the Code of Civil Procedure."	"Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908."
18	Ditto ...	"section 392 of the said Code."	"rule 9 in Order XXVI in Schedule I to the said Code."
19	Section 162 ...	"section 235 of the Code of Civil Procedure."	"rule 11 (2) in Order XXI in Schedule I to the Code of Civil Procedure, 1908."
20	Section 165, sub-section (1).	"section 289 of the Code of Civil Procedure."	"Section 163."
21	Section 169, sub-section (1).	"section 295 of the Code of Civil Procedure."	"section 73 of the Code of Civil Procedure, 1908."
22	Section 170, sub-section (1).	"sections 278 to 283 (both inclusive) of the Code of Civil Procedure."	"rules 58 to 63 (both inclusive) in Schedule I to the Code of Civil Procedure, 1908."
23	Section 170, sub-section (4).	"section 310A of the Code of Civil Procedure."	"rule 89 in Order XXI in Schedule I to the Code of the Civil Procedure, 1908."
24	Section 173, sub-section (1).	"section 294 of the Code of Civil Procedure."	"rule 72 in Order XXI in Schedule I to the Code of Civil Procedure, 1908."
25	Section 174, sub-section (2).	"section 315 of the Code of Civil Procedure."	"rule 93 in Order XXI in Schedule I to the Code of Civil Procedure, 1908."
26	Section 174, sub-section (2), proviso (in two places)	"section 311 of the Code of Civil Procedure."	"rule 90 in Order XXI in Schedule I to the Code of Civil Procedure 1908."
27	Section 174, sub-section (3).	"section 313 of the Code of Civil Procedure."	"rule 91 in Order XXI in Schedule I to the Code of Civil Procedure, 1908"

Re-arrangement of definitions in section 3 and re-lettering of section 148 of Act VIII of 1885.

120. The definitions as set forth in section 3 of the said Act as hereby amended shall be re-arranged in alphabetical order and shall be re-numbered accordingly and the clauses of section 148 of the said Act shall be numbered from (*a*) to (*m*), and the necessary amendments consequential to such re-arrangement and re-numbering shall be made throughout the said Act.

Substitution of new Schedule for Schedule II of Act VIII of 1885.

121. For Schedule II of the said Act the following shall be substitued, namely :—

"SCHEDULE II.

Forms of Receipt and Account

FORM OF RECEIPT.

Landlord's portion.

1. Serial No. of receipt
2. Estate......Village.........Thana
3. Name of common agent, if any, { appointed under sub-section (*1*) of section 99A. authorized under sub-section (*5*) of section 99A to receive rents.
   Address
   Village Thana
4. Khatian No. of the tenancy in record-of-rights (if any)
5. Name of tenant
6. Father's name
7. Annual rent
8. Annual cess
9. Jolkar, pholkar, etc., if any
10. Total

[*Reverse*]

Date of payment.	Name of person through whom paid.	Year and instalment to which the payment is credited.	Rent.	Cess.	Interest.	Total.

Signature of landlord or agent.

Signature of tenant.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(*2*) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

FORM OF RECEIPT.

Tenant's portion.

1. Serial No. of receipt
2. Estate......Village.........Thana
3. Name of common agent, if any, { appointed under sub-section (*1*) of section 99A. authorized under sub-section (*5*) of section 99A to receive rents.
   Address
   Village Thana
4. Khatian No. of the tenancy in record-of-rights (if any)
5. Name of tenant
6. Father's name
7. Annual rent
8. Annual cess
9. Jolkar, pholkar, etc., if any
10. Total

[*Reverse*]

Date of payment.	Name of person through whom paid.	Year and instalment to which the payment is credited.	Rent.	Cess.	Interest.	Total.

Signature of landlord or agent.

Signature of tenant.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(*2*) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

FORM OF ACCOUNT.	FORM OF ACCOUNT.
Estate Name of agent Address Tenant's name Father's name Khatian No. (if any) Village number Thana Area of tenure or holding if known Demand of previous years unpaid — Rent, Cess Demand of the year — Rent, Cess, Total Amount paid — Rent, Cess, Interest, Total Balance outstanding with details—	Estate Name of agent Address Tenant's name Father's name Khatian No. (if any) Village number Thana Area of tenure or holding if known Demand of previous years unpaid — Rent, Cess Demand of the year — Rent, Cess, Total Amount paid — Rent, Cess, Interest, Total Balance outstanding with details—

	Rent.	Cess.	Interest.	Total.		Rent.	Cess.	Interest.	Total.
1923					1923				
1924					1924				
1925					1925				
1926					1926				

Signature of landlord or agent.	*Signature of landlord or agent.*
Signature of tenant.	*Signature of tenant."*

Amendment of Article 1 (a) in Part I of Schedule III of Act VIII of 1885.

122. In the first column of Article 1 (*a*) in Part I of Schedule III of the said Act after the word "lease" the words "or settlement" shall be inserted.

Amendment of Article 2 in Part I of Schedule III of Act VIII of 1885.

123. (*a*) In Article 2 in Part I of Schedule III of the said Act in sub-clause (*a*) in the first column for the word "holding" the words "tenure or holding" shall be substituted, and in the third column after the word "deposit" the words "or presentation of the postal money order, as the case may be," shall be inserted.

(*b*) For clause (*b*) the following shall be substituted in the first, second and third columns, namely :—

"(*b*) in all cases where the rent is payable in kind in whole or in part.	One year	The last day of the agricultural year in which the arrear fell due.
(*c*) where the rent is a money rent.	Three years.	The last day of the agricultural year in which the arrear fell due."

Insertion of new Article (2a) in Part I of Schedule III of Act VIII of 1885.

124. After Article 2 in Part I of Schedule III of the said Act the following shall be inserted, namely :—

"(2*a*) For the recovery of a landlord's fee on transfer of an occupancy holding.	Three years.	Two months from the date of registration of the instrument of transfer, or, in the case of a transfer by bequest, two months from the date on which the transferee took possession or obtained probate or letters of administration, whichever is earlier".

Amendment of Article 6 in Part III of Schedule of Act VIII

125. (*1*) In the first column of Article 6 in Part III of Schedule III of the said Act for the figures "1877" the figures "1908" shall be substituted.

(*2*) To column 1 of the said Article as so amended the following shall be added, namely :—

"Provided that, where a sale in execution for arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article."

NOTES ON CLAUSES.

Clause 3.—It is proposed to remove the references to areas outside the province and to simplify section 1 by stating definitely the areas to which the Act does not apply instead of referring to the Scheduled Districts Act.

Clause 4.—The reference to Orissa in section 2 has been omitted.

Clause 5.—(*a*) As it is proposed to treat joint and co-sharer landlords and joint and co-sharer tenants alike under the Act, a definition has been inserted to include joint and co-sharer landlords under the term co-sharer landlord, and joint and co-sharer tenants under the term co-sharer tenant.

(*b*) This sub-clause introduces in section 3 the presumption that a *bonâ fide* cultivator who is permitted to cultivate land on condition that he hands over a share of the produce is a tenant of that land. For an explanation of the necessity for this provision the main report should be read.

(*c*) The words " or deliverable " are redundant.

(*d*) In view of the general principle adopted regarding the occupancy rights of under-raiyats, the definition of holding has been extended to include that of an under-raiyat.

(*e*) This sub-clause introduces a definition of homestead, in order to make it clear that the provisions of section 182 as amended by clause 111 do not apply to shops, hotels and similar premises.

(*f*) Of the alternative definitions of village in the West Bengal and Eastern Bengal Acts, the Eastern Bengal form has been adopted with necessary modifications.

(*g*) This sub-clause defines the agricultural year as the *Bengali year*. This year is in force throughout Bengal, except in a part of Midnapore and in Chittagong. Unless there is a serious objection to its adoption in these areas, it is desirable to make the year uniform throughout Bengal for the purposes of the Act.

It is proposed in clause 120 to re-arrange the definitions in section 3 in alphabetical order.

Clause 6.—Section 4 has been recast so as to include the two classes of occupancy and non-occupancy under-raiyats which it is proposed to recognize. Tenure-holders have also been divided into two classes permanent and temporary.

Clause 7.—Section 5 has been modified in view of the introduction of a definite class of under-raiyats with occupancy rights.

Clause 8.—The drafting of sub-section (*3*) to section 7 has been amended, and the usual presumption that the present rent is fair and equitable has been introduced.

Clause 9.—This clause introduces a revised section 8 giving power to the Court to allow a period of ten years instead of five years, during which the rent may be gradually increased to the amount settled by the Court. It will also be open to the Court to fix the instalments as it may think best instead of being compelled to decree annual increases as under the present law.

Clause 10.—This addition has been made to section 9, in order to remove any misapprehension by the Courts as to the application of the section when there have been gradual enhancements.

Clause 11.—The object of the proposed sections 12—15 is to simplify the cumbrous procedure of the present sections of the Act in respect of the realization of landlords' fees for the transfer of permanent tenures. The lines adopted are those proposed later for the realization of the same fees for the transfer of occupancy rights.

Briefly, the proposed procedure will leave the actual payment of the landlord's fee a matter between the parties concerned, the amount being payable and recoverable as rent. At the time of the registration of the document of transfer, a notice must be filed with the registering officer for service on the landlord giving the particulars of the transfer. The result is that the Collector will have no responsibilities in the matter. For the same reason, in the case of succession, the notice will be served through the Civil Courts instead of through the Collector, and an additional penalty is provided for failure to give notice of succession within six months.

Provision is made for the service of the notice on, and the payment of the fee to the common agent, who will be appointed under clause 63.

Clause 12.—This clause is consequential on the amendments made by clause 11.

Clause 13.—This clause makes it clear that the transferee of a permanent tenure includes his successors in interest.

Clause 14.—Section 18 has been amended so as to make it clear that a raiyat holding at a rent or rate of rent fixed in perpetuity can acquire the status of a settled raiyat of a village and that certain sections of the Act shall not apply to such a raiyat.

Clauses 15, 16 and 17.—These clauses reconcile the verbal differences between the Western Bengal Amendment Act of 1907 and the Eastern Bengal Amendment Act of 1908 in Chapter IVA and provide for the forfeiture of all landlord's fees deposited before the passing of the new Act and not claimed within three years from the date of the deposit.

Clause 18.—It is proposed to extend the Western Bengal section 19 t Eastern Bengal.

Clause 19.—The principle underlying section 22 of the Act is that it is undesirable to encourage the acquisition of raiyati rights by persons belonging to the class of landlords and it is carried into effect so far as their own tenures or estates are concerned. Neither forms, however, of the section make the position definite either of an immediate co-sharer landlord, who purchases an occupancy holding in his own estate or tenancy, or of an under-raiyat on an occupancy holding, which comes into the possession of a landlord. Having regard therefore to the principle underlying the section, it is proposed in the case of the co-sharer landlord to insert a provision for the conversion of the raiyati interest purchased by him into a permanent tenure, and in the case of the under-raiyat to make it clear that he becomes a raiyat. In both cases necessary provisions and modifications are proposed regarding rent. It is also proposed to safeguard the rights of third parties by a definite provision that an encumbrance on the holding shall continue to be attached not to the holding but to the interest of the landlord as proprietor or tenure-holder as the case may be.

The provision in the proposed sub-section 6 (*ii*) is necessary in view of the drafting of the remaining sections. Without it no right of pre-emption under proposed section 26G could accrue.

Certain consequential amendments regarding the merger of the occupancy rights of under-raiyats are also proposed.

These proposals have rendered a re-draft of the major part of the section necessary, but no essential change of principle has been introduced.

It is proposed to substitute the words "a right to hold as a raiyat any land" for the words "right of occupancy in any land" in present sub-section (*4*), in order to meet certain rulings which seem to imply that a temporary tenure-holder, though he cannot acquire an occupancy right in any land which he has purchased, can hold it as a non-occupancy raiyat and becomes an occupancy raiyat as soon as the temporary tenure expires.

It is further proposed to substitute the term "temporary tenure-holder" for the term "ijaradar."

Clause 20.—The provision in section 23 relating to the cutting of trees has been omitted and dealt with in the following clause.

Clause 21.—The amendments proposed in regard to the raiyat's rights in trees are explained in the main report.

Clause 22.—This clause deals with the transferability of occupancy holdings on the lines indicated in the main report.

Clause 23.—It is proposed to amend section 36 on the lines proposed in clauses 9 and 10.

Clause 24.—It is reasonable that where a raiyat has had his rent settled when certain arrangements in respect of irrigation or maintenance of embankments were in force that he should receive a reduction of his rent so long as the landlord fails to carry out his obligations in this respect. It is proposed to amend section 38 accordingly.

Clause 25.—It is proposed to modify the provisions of section 40 regarding the commutation of produce-rents on the lines indicated in the main report.

Clause 26.—It is reasonable that a non-occupancy raiyat should be liable to ejectment on the expiry of his lease, whether that lease has been registered or not, and it is not desirable to put non-occupancy raiyats to the trouble and expense of registering their leases in all cases. It is proposed to amend clause (*c*) of section 44 accordingly.

Clause 27.—This amendment of section 46 is merely verbal.

Clauses 28—30.—For the reasons stated in the main report, it is proposed to give the majority of under-raiyats rights of occupancy as against their immediate landlords, but there are certain cases in which this provision would operate harshly on persons who find it necessary to sublet their land temporarily. It is proposed therefore to amend section 48 so as to protect such persons.

Clause 28 enumerates the classes of under-raiyats on whom it is proposed that occupancy rights should not be conferred.

Clause 29 explains the nature of the occupancy right which it is proposed to confer upon under-raiyats other than those who are excepted under clause 28. Briefly, the major portion of Chapter V is made applicable to occupancy under-raiyats by virtue of this clause, but, in cases where the other sections of the Act are applicable to occupancy raiyats, their extension to occupancy under-raiyats is specifically mentioned in the other clauses of the Bill.

Clause 30.—This clause amends section 49 so as to define the restrictions on the ejectment of non-occupancy under-raiyats.

Clause 31.—The presumption contained in section 50 (*2*) that where the rent of a holding has not been changed for 20 years, it shall be presumed that the holding has been held at that rate from the time of the permanent settlement, operates inequitably now that 130 years have elapsed since the date of the permanent settlement. The existing section penalizes these landlords who have not enhanced rents in recent years and gives an advantage to landlords who have disregarded the provisions of the law relating to the granting of rent-receipts. It is proposed therefore to omit sub-section (*2*). It is proposed, however, to extend the provision of sub-section (*3*) to tenure-holders.

Clause 32.—In order to meet certain doubts which have arisen, it is proposed to amplify sub-section (*6*) of section 52, in order to make it clear that an entry of area in a document may be presumed to have been ascertained on measurement if it is shown that a practice of settlement after measurement was in use at or about the date on which such document was drawn up.

Clause 33.—It is proposed to amplify the provisions of section 54 relating to the remittance of rent by money order, in order to remove certain practical difficulties which discourage the tenants from making use of this method of payment and make the landlords reluctant to accept rents tendered in this way.

Clause 34.—The provisions of the Act relating to the grant of rent-receipts are frequently disregarded, because the landlords and tenants fear that they will be prejudiced by the entries made on the prescribed form of receipt. It is important that the tenants should receive a receipt for any money paid on account of rent immediately it is paid, and it is proposed to simplify the form of rent-receipt by the omission of all entries which are not essential for this purpose. Each tenant will, however, be entitled to receive without payment of fee a statement of account on the expiry of three months after the end of each year containing certain other particulars, and, in order to remove any reasonable reluctance to the issue

or acceptance of such statement, it is provided that the entry of area in such statement shall not be binding on the landlord or tenant in any suit or proceeding for the alteration of the rent of the tenancy. It is proposed to amend section 57 accordingly.

Clause 35.—Section 58 has been re-drafted, in order to provide penalties for withholding receipts and statements of account, and the period during which action may be taken by the Collector has been extended from one year to two years. The landlord has been given two months after the date of the demand in which to prepare the statement of account for each year before he becomes liable to a penalty.

Clause 36.—A slight modification has been made in section 61, in order to remove certain difficulties raised by the Courts.

Clauses 37 and 38.—Changes have made in sections 63 and 64, in order to make it compulsory on the Courts in certain cases to send rents deposited under sections 61A and 61B by money order to the landlord. The drafting of section 63 has been amended.

Clause 39.—In order to prevent landlords from harassing tenants by means of suits for rent which the latter have already tendered by money order or deposited in the Civil Court, it is proposed to preclude the landlord from recovering in such suits damages, interest or costs, and also to make him liable for damages.

Clause 40.—This amendment of section 65 is consequential on the proposal to give occupancy rights to certain classes of under-raiyats.

Clause 41.—The change here made in section 66 (*1*) is consequential on the proposal to adopt the Bengali year for the whole Presidency [*vide* clause 5(*f*)]. The period in sub-clause (*2*) has been extended to 30 days.

Clause 42.—It is proposed by an amendment of section 67 to charge interest on arrears between the date of the institution of the suit and the date of realization at the same rate as is now prescribed in section 67 for the period before the institution of the suit. On the whole it seems advisable to make the rate uniform for both the periods, and this should tend to discourage the defendants from protracting the proceedings.

Clause 43.—It is reasonable, owing to the circumstances in which damages are awarded, that such damages should not be less than the interest which would otherwise be given under section 67. The proposed amendment of section 68 gives effect to this proposal.

Clause 44.—The change made by this clause is consequential on the proposed repeal of the chapter on distraint.

Clause 45.—In view of the detailed proposals regarding the transferability of occupancy rights, it is no longer necessary to retain section 73.

Clause 46.—This change in section 74 is consequential on the proposed change made in section 179, which will make a contract for the payment of an *abwab* illegal in the case of permanent *mukarari* tenures, but it is not proposed to interfere with existing contracts regarding such tenures.

Clauses 47 to 53.—These clauses provide that an under-raiyat shall have the same privileges and liabilities as regards improvements as a raiyat. It is also proposed to make it clear that the construction of a well, tank, etc., for the purpose of drinking water is an improvement, and that a fee for the construction of any legal improvement is an *abwab*. The interpretation of the word "suitable" before dwelling-house in sections 76 (*f*) and 79 is doubtful, and the word has therefore been omitted in both cases. Clause 52 introduces certain consequential changes in sections 86 and 87 due to the new provisions relating to under-raiyats.

Clause 54.—At present it is necessary in consequence of section 85 for a landlord to serve a notice of annulment under section 167 on under-raiyats holding under a registered lease, in cases where the holding of a superior raiyat is sold in execution of a decree for arrears of rent due from that raiyat. As the interest of an occupancy under-raiyat will not be

treated as a protected interest under section 160 (*d*), it is proposed to make it unnecessary in future to serve a notice under section 167 on any under-raiyat, whether holding under a lease or not. The existing rights of under-raiyats holding under leases registered before the 1st of November, 1922, are, however, retained.

Clause 55.—It is reasonable that when a tenant takes abatement of rent on account of diluvion, he should cease to have any right in the land subject to the ordinary law of alluvion and diluvion. There has, however, been a decision to the contrary. It is therefore proposed to embody the above principle in the law.

Clauses 56 and 57.—Clause 57 gives protection to existing occupancy under-raiyats who have been in existence since the 1st January, 1915, in the event of the surrender or abandonment of the holdings of their landlords, if the latter are raiyats, on complying with certain conditions. The date is an arbitrary date, but in view of section 85 (*2*) of the Act it should not exceed nine years before the passing of the amending Bill. The present section 87 (*4*) will then apply only to non-occupancy under-raiyats. This has been provided for in clause 56, which also contains certain consequential amendments.

Clause 58.—Of the alternative forms of section 88 in the Western Bengal and Eastern Bengal Tenancy Acts, it is proposed to adopt the Western Bengal form.

Clause 59.—The first part of this clause (new section 88A) makes it clear that no co-sharer landlord can enter into a contract with a tenant to the prejudice of the other co-sharer landlords. The second part (new section 88B) safeguards co-sharer tenants against any sub-letting by other co-sharer tenants of any of the lands in a manner, which would render them liable to ejectment or a penalty, by allowing the former to sue the sub-tenant for ejectment.

Clause [illegible] present it is necessary, when action is taken under section 93, to appoint a common manager for the whole of the estate or tenure concerned, although a dispute may exist in only a small portion. Under the section as amended by this clause it will be possible to appoint the common manager for those portions of the estate or tenure which are affected by the dispute.

Provision is also made for enabling the tenants to apply for the appointment of a common manager in cases where, owing to the existence of a large number of small co-sharers in the estate or tenure, the tenants are put to inconvenience and harassment in the payment of their rent. It is proposed, however, later under clause 63 to allow the landlords to avoid the appointment of a common manager by the appointment of a common agent.

Clauses 61 and 62.—It is proposed that in cases where a common manager is appointed he should be nominated and controlled by the Collector instead of by the District Judge.

In section 98 (*7*) it has been proposed to give the common manager power to apply for the extension of section 158A to the estate or tenure.

Clause 61A—Makes an amendment consequential on renumbering (*vide* clause 76).

Clause 63.—This clause introduces a common agent appointed by co-sharer landlords where they agree, or by the Collector on their behalf when they do not, for the receipt of notices of transfer and the realization of transfer fees on account of tenures and holdings, and, where the landlords so desire, for the collection of rent also. The proposal is intended to simplify the procedure both for the payment of transfer fees and rents by tenants and their collection by landlords, and it is practically essential for the proper working of the proposed procedure regarding the transferability of occupancy holdings.

Clause [illegible] the Collector [illegible] and control the [illegible] the rules [illegible] and duties [illegible] of Revenue [illegible] High Court [illegible] 100 accordingly.

Clause 65.—This change in section 101 is consequential on the changes made in regard to the appointment of common managers.

Clause 66.—The change made in clause (*b*) of section 102 is consequential on the other changes made in connection with occupancy under-raiyats.

Clauses 67 and 68.—The Eastern Bengal and Assam sections 103B and 104H, have been adopted, as the wording is more precise. There is no material difference between the Western Bengal and Eastern Bengal sections.

Clause 69.—The Eastern Bengal and Assam section 105 has again been adopted here with the modification that it is proposed to allow four months instead of two months from the date of the certificate of the final publication for the filing of applications for the settlement of fair rents.

Clause 70.—An addition has been made to section 105A, which will enable an issue to be framed regarding the rent payable at the time of the publication of the record-of-rights.

Clause 71.—Ordinarily, it is desirable that each party in proceedings under section 105 should bear their own costs, and it is proposed to add a provision to this effect. It is also desirable to provide for the levy of court-fees when an issue is raised under section 105A, which, but for those proceedings, would have to be raised under section [illegible].

Clause 72.—The Eastern Bengal and Assam section 106 has been adopted with the modification that the time for filing cases has been extended to four months from the date of the certificate of the final publication.

Clause 72A.—Makes certain changes consequential on renumbering (*vide* clause 76).

Clause 73.—A verbal change has been made in sections 108 and 108A,—now section 115B,—in order to make the sections more explicit.

Clause 74.—The draft section 108A has been removed to the end of the chapter and re-numbered 115B, in order to make it clear that it applies to proceedings under Part II of the chapter. The time within which *bonâ fide* mistakes in the record may be corrected has been extended from one year to two years.

Clause 75.—A proviso has been added to section 109 so as to allow all issues raised in proceedings under sections 105 and 106, which are not finally adjudicated on by the Revenue-officers, being subsequently tried by the Civil Courts.

Clause 76.—It is proposed to insert a reference to section 115B (old number 108A) in section 109A, as the omission appears to be an error of drafting. Inasmuch as the powers of revision allowed by sections 108 and 115B are discretionary, it is also proposed to enact that there shall be no appeal against an order refusing to exercise these powers. As section 109A does not apply only to cases where a settlement of land revenue has not been made, it is proposed to remove it to the end of the chapter and re-number it as section 115C. No appeal, however, should lie to the Special Judge in proceedings for the settlement of land revenue, that is to say, under Part II of Chapter X.

Clause 77.—The Eastern Bengal and Assam section 109B has been adopted.

Clause 78.—It is proposed to make section 109C, which is in force in Western Bengal only, applicable to Eastern Bengal also, with the modification that it will no longer be necessary for an officer to be specially empowered by the local Government for the purposes of this section.

Clause 79.—This clause brings together the various sections in Chapter X relating to notes in the finally published record-of-rights and co-ordinates the Western Bengal and Eastern Bengal law on the subject.

Clause 80.—The change made here corrects an error of drafting in section 110.

Clause 81.—The [illegible] Bengal and Assam section [illegible]B is preferred, because Revenue-[illegible] clearly be precluded from trying issues under section 105B, [illegible] issues under section 106, which are *sub judice* in the Civil Courts.

The substitution of four months for three months is consequential on the amendment of section 106.

Clause 82.—Of the alternative forms of the Western Bengal and Eastern Bengal section 112, the Eastern Bengal form has been adopted. Experience, however, shows that the provisions of this section can be defeated by the exaction of excessive rents pending the currency of the proceedings. It is therefore proposed that such rents shall not be recoverable for the period of the proceedings.

Clause 83.—This amendment of section 113 is consequential on the changes proposed in regard to occupancy under-raiyats.

Clause 84.—The repeal of section 115 is consequential on the omission of clause (*2*) of section 50.

Clause 85.—The Eastern Bengal and Assam section 115A has been adopted.

Clause 86.—It was resolved at a Conference of District Boards, held in 1919, that tenants of any roadside lands should not be allowed to acquire occupancy rights in them. This clause therefore provides for the extension of section 116 to such and similar lands. The reference to Bihar has been omitted.

Clause 87.—It is proposed to correct the spelling of the word "kamat" by the substitution of the word "khamat."

Clause 88.—It is proposed to repeal the whole chapter on *distraint*, as it is not necessary in the province as at present constituted, where it is rarely used, and then probably only as a means of oppression.

Clause 89.—It it proposed to amend section 144, so as to enable landlords, subject to necessary safeguards, to bring one suit against the same tenant on account of the arrears of rent of more than one tenancy. It is also proposed to make it clear that a rent-suit can only be brought in a Court within the jurisdiction of which the lands of the tenure or holding are situate.

Clause 90.—This clause gives additional facilities to landlords for the recovery of rents of tenancies held by a large number of co-sharer tenants. The matter is discussed at length in the main report.

Clause 91.—It is proposed to enact that section 147 does not apply to suits for the recovery of landlords' fees on transfers of tenancies. Transfers may occur at any time and therefore this section should not be made applicable.

Clause 92.—Of the two alternative Eastern Bengal and Western Bengal forms of section 147A, it is proposed to retain the Eastern Bengal form with, however, the addition of sub-section (*4*) from the Western Bengal section, so as to safeguard the rights of third parties. The drafting has been amended so as to bring it into conformity with the Code of Civil Procedure.

Clause 93.—The objects of the various changes proposed by this clause in section 148 are to co-ordinate the Eastern Bengal and Western Bengal forms of the law and to cheapen the procedure in rent-suits. The principal changes may be summarized as follows:—

(1) In areas where a record-of-rights has been prepared it is sufficient for the identification of the lands in suit, if the khatian number of the tenancy is given, and its area and rental.

(2) Summons may be issued at the discretion of the Court by registered post, and the Court may presume service on proof that the letter was duly registered.

(3) The Court may inform the natural guardian of a minor defendant that he will be [illegible] as the guardian, and unless he appears [illegible] within 15 days, the Court may proceed with the suit on the assumption that the minor is properly represented.

(4) If the Court accepts or refuses a written statement, it must record its reasons.

(5) One affidavit may be used in several cases tried on the same day.

(6) Any party who files collection papers or extracts from records-of-rights as evidence may take them back for use in other cases, with the permission of the Court, and in that case copies of the relevant entries will be made and certified by the Court without charge and kept with the record of the case.

Clause 94.—This clause provides a procedure for the recovery of rent by co-sharer landlords for the reasons explained in the main report.

Clause 95.—It is proposed by an amendment of section 153 specially to empower judicial officers below the rank of a Subordinate Judge to exercise final jurisdiction in cases where the amount of rent claimed, including interest and damages, does not exceed Rs. 100 instead of Rs. 50 as at present.

It has also been made clear that no issue relating to the title to land in a rent-suit from which no appeal lies shall be considered *res judicata* in a subsequent title-suit.

Clause 96.—This clause amends section 156 so as to make the rules which apply in the case of a raiyat ejected from his holding applicable in the case of an under-raiyat similarly ejected.

Clause 97.—The changes proposed in section 158 are consequential on the proposal to recognize occupancy under-raiyats.

Clause 98.—When section 158A was introduced into the Bengal Tenancy Act in 1907, it was expected that a general system of maintenance of the record-of-rights would be introduced by Government, and it was intended that the privilege of the certificate procedure for the realization of rents should be granted to a landlord only if the record-of-rights was maintained by Government. As the idea of general maintenance has now been abandoned it is proposed to remove this compulsory condition, but in its place to impose on Government the obligation of considering how the landlord himself maintains his record and of ascertaining the views of the tenants on the question of the introduction of the procedure.

Clause 99.—The change proposed in section 158B is verbal, consequent upon the proposed alteration of section 148A.

Clause 100.—This clause amends section 159 so as to make it clear that the title of a purchaser of a tenure or holding in a sale in execution of a rent-decree takes effect from the date of the confirmation of the sale in conformity with section 169 *(1)* *(c)*.

Clause 101.—Under the present law there are doubts whether the right of a raiyat holding at a fixed rent or rate of rent is a protected interest. It is therefore proposed to make it clear that it is a protected interest; but to amend section 160, in order to prevent a purchaser being defrauded by the outgoing tenure-holder or proprietor giving *mukarari* rights on unduly small rents on payment of a premium, by enacting that such rents are not protected.

Clause 102.—This clause makes it clear by an amendment of section 161 that adverse possession is not an incumbrance.

Clause 103.—The use of a single form for the order of attachment and the proclamation of sale of property is proposed, in order to simplify the procedure for the execution of rent-decrees. It is also proposed, in lieu of the present law, which prescribes a large number of methods of publication of this notice, to insert in section 163 three essential methods of advertising the property for sale.

Clause 104.—This proposed amendment of section 166 is consequential upon the proposal to allow a raiyat at fixed rates to acquire the status of a settled raiyat.

Clause 105.—The proposed amendment of section 167 regarding the date is consequential upon the proposed amendment in section 159 and on the present section 169 *(1)* *(c)*. It is proposed to give all sub-divisional officers powers under section 167 *(1)* and *(2)*.

Clause 106.—The proposed amendments of section 169 are consequential upon those proposed in section 148A.

Clause 107.—Of the alternative section 170 now in force in Western Bengal and Eastern Bengal, respectively, the Eastern Bengal form has been adopted, in order to avoid possible hardship to persons interested in the tenancy who have not been made parties to the suit.

Clause 108.—This clause makes a formal amendment in the reference to the Indian Registration Act in section 175.

Clause 109.—The changes proposed in section 178 are mainly consequential upon the general principles adopted regarding occupancy rights of under-raiyats and transferability. In particular, it is proposed to prevent any contract, whether made before or after the passing of the Bengal Tenancy Act, from taking away or limiting the occupancy right of an under-raiyat as against his immediate landlord or the right of transferability of an occupancy raiyat or under-raiyat or their rights regarding trees.

It is also proposed to limit the right of a landlord to recover from a raiyat or under-raiyat as rent produce in excess of half the gross produce of the holding.

Clause 110.—Under the present interpretation of section 179, conditions for *abwabs* [which are illegal under section 74 or section 77 (*3*)] or for interest on arrears of rent in excess of that allowed by section 67 can be embodied in permanent *mukarari* leases. It is proposed to make such conditions in future leases of this description invalid.

Clause 111.—The existing provision regarding homesteads in section 182 leaves the law in a state of great doubt and uncertainty. It is proposed therefore to provide generally that the homestead rights of a raiyat or under-raiyat shall ordinarily be regulated by the provisions of the Act, but that if a person is not originally a raiyat or under-raiyat, he shall not acquire any statutory rights in his dwelling-house, etc., by subsequently acquiring a right to hold land as a raiyat or under-raiyat.

Clause 112.—It is proposed to omit both illustrations to section 183 in view of the general principles adopted in the report regarding transferability and the rights of under-raiyats.

Clause 113.—In the district of Rangpur there exist certain tenancies called jotes, which form one class of tenancy, but vary in size from small raiyati holdings *de facto* to large tenures. Under the Act they have to be classified as either raiyati holdings or tenures. If they were classified as raiyati holdings, they would be given the right of occupancy mentioned in paragraph 4 of the main report. If they are classified as tenures, they lose this permanent right, the period of the tenancy being limited by the terms of the contract. There is, however, good reason to believe that they were originally raiyati in origin, and therefore a permanent right should be attached to them. Moreover, they have been in the undisturbed possession of the jotedars for generations, and there are authorities who have recognized them as permanent or as containing a permanent element. The position is anomalous and unsatisfactory; and as there is justification for regarding the jotedars as permanent, it is proposed to confer on those jotedars who have been in possession of their jotes since 1885 permanent rights as tenure-holders, but as a set-off to allow the landlord to treat them as raiyats in respect of transferability, that is to say, to give the landlord both the right to realize a fee on transfer, which, subject to any existing contract, would be equivalent to 25 per cent. of the purchase-money, and the right of pre-emption in accordance with the provisions proposed in the case of transfers of raiyati holdings. For the present it is proposed to restrict the operation of the section to the district of Rangpur, but further enquiry may elicit the fact that it should be applied elsewhere. It is also proposed to give the Local Government power to extend the operation of the section to other areas.

Clause 114.—The Indian Limitation (Amendment) Act, 1922, X of 1922, appears to have made some change in the law of limitation as regards cases under the Bengal Tenancy Act. It is proposed, however, to retain the substance of the law as at present in the Bengal Tenancy Act by the necessary changes in section 185.

Clause 115.—The changes made in section 188 are explained in the main report.

Clause 116.—Of the two alternative forms of section 188A, the Eastern Bengal form has been adopted.

Clause 117.—The Patni Taluk Regulation deals with *khudkast* or resident raiyats, and not with occupancy raiyats. All occupancy raiyats are not therefore protected in the event of the patni taluk being sold up for arrears of rent. It is proposed to remedy this by an amendment of section 195

Clause 118.—This clause makes formal drafting amendments in regard to certain references in the Act.

Clause 119.—This clause substitutes references to the present Code of Civil Procedure for the references to the previous Code contained in the present Act.

Clause 120.—This clause makes certain formal re-arrangements in sections 3 and 148.

Clause 121.—*Vide* note on clause 34.

Clause 122.—This amendment is consequential on clause 26.

Clause 123.—In view of the hardship that may be caused to tenants holding on produce rents if they are called upon to pay up the rent for three years at one time, it is proposed to limit the period of limitation for rent-suits in such cases to one year. An error in drafting in the omission of the word "tenure" has also been corrected.

Clause 124.—In view of the proposal to make landlords' fees on transfer recoverable as rent, it is proposed in this clause to apply the period of limitation in the case of rent-suits to such fees from the dates given in the clause.

Clause 125.—Sub-clause (*1*) introduces a necessary change in the date of the Indian Limitation Act.

By sub-clause (*2*) it is proposed to enact that the time spent on the execution of a decree for rent on a sale which is subsequently set aside on application shall be excluded from the calculation of the period of limitation for the execution of such a decree.

Note of dissent by Raja Ban Behari Kapur Bahadur, C.S.I.

I regret I am unable to agree with the principles upon which the proposed legislation has been based, not to say I am at variance with most of the details arising out of the applications of these principles. In view of my wholesale disagreement with the main purpose of the Bill I feel called upon to give reasons for my disagreement specially seeing that my connection with this piece of legislation is likely to end here.

2. The history of occupancy rights as has been stated to be in paragraph 4 of the Report has not in my opinion been correctly recited. Before the Rent Act of 1859 Bengal was aware of only two classes of raiyats—the *khodkast* and the *paikast*. The *khodkast* raiyats were resident and hereditary cultivators of village lands and the *paikast* raiyats were non-resident cultivators. The resident cultivators were not liable to be ejected on the sale of the superior estate or tenure for arrears of rent while the non-resident cultivators were. Both sorts of raiyats however held their lands while they paid the rents. There was therefore no raiyat with a right of occupancy as the expression has now come to be understood. Occupancy raiyats in a sense akin to its present meaning were first created by the legislation of 1859 and under that legislation in order to acquire such a right a raiyat had to hold the same land continuously for 12 years and that again only so long as he paid the rent payable on account of the same. Of course this right could only be acquired in communal lands and not on the proprietor's desmesne land generally known by the names of *Sir*, *Khamar*, *Khamat*, etc. Then came the legislation of 1869 which did not make any material changes in this respect. Lastly came the Act of 1885 in which this right has been made much more elastic and to the advantage of the raiyat. Up to this time, and even to the present day, occupancy raiyats' holdings have been held to be non-transferable without the landlords' consent, in the absence of any established custom or usage. The reason of this rule is obvious to any one who pretends to have read even cursorily the literature that preceded the Permanent Settlement of Bengal. That literature is voluminous. Any one who will dare attempt legislation on the question of the relation of landlord and tenant must not risk the task without being a master of the revenue administration of Bengal from the earliest times to the present day. The Permanent Settlement of the Revenue of Bengal was based upon the then existing assessment derivable from the cultivators of the soil at the time, and as the Government revenue was fixed in perpetuity it was thought quite fair and reasonable to legislate for the fixity of the rent of *these* raiyats who have been described in the Revenue Sale Regulation of Bengal as *istmurari* raiyats. The lands not under cultivation at the time were made subject to the revenue assessed on the estate as a whole, leaving the profits of such lands to the proprietors, as they could be made profitable only by the employment of their capital and labour. Occupancy raiyats therefore must have come out of those who were brought upon these lands by the proprietors, and evidently the capital must have been found by them and it is in the nature of things to suppose that the cultivators contributed their labour and the proprietor found the funds under a contract which completely regulated the relation between them. This contract has been, from time to time, interfered with by legislation and the occupancy raiyat has been created without proper regard to the fact that the proprietor's side of the question has not been dealt with with the care it deserves, and the present legislation aims at the last stroke to the proprietor's interest in the land for which he has been spending money since the Permanent Settlement.

3. The proposed legislation attempts to make the holdings of occupancy raiyats transferable without the landlords' consent and 25 per cent. of the price is made payable to the landlord as a solatium. This question of transferability of occupancy holdings has a close bearing with the question of the conferment of occupancy rights to under-raiyats. My views on this most important question I have fully set out in Paper No. 52 (*see* Extract A at end of note).

4. Then I come to the question of commutation. In my view the principle of commutation should not at all find a place in the Bengal Tenancy Act The system of payment of labour by produce not only conduces to the advantage of the landlord but it is a source of general well-being to

the country at large. Even at the present day in large parts of Bengal the system of barter is not unknown, and payment of service by land is an institution which prevails in the most enlightened parts of the Province. In every village in the country barbers, washermen, potters, ferrymen, *paiks*, carpenters, blacksmiths etc., are paid by land and sometimes in kind. Cultivators of land similarly have been paid and are paid for their labour in kind. These cultivators are not tenants but mere labourers. The definition that has been attempted in clause 3 of section 3 is therefore not only uncalled for, but a great infringement on the rights of the owner of the land. This definiton fails to take account of the variety of circumstances that contribute in particular cases to the creation of the contract between the labourer and the owner of the soil. One instance out of many may be noticed here by way of illustration. Suppose a cultivator answers the definition entirely, but a further incident turns up to the effect that the owner of the soil supplies the manure or the cost of irrigation. Would the cultivator still be a tenant though he provides the ploughs, cattle and implements of agriculture? I can conceive a variety of other circumstances that is likely to control this sort of contract and I make no doubt that these and other varieties do exist in the country, complicating necessarily the problem between the parties. A definition on the line suggested should not therefore be attempted. The question should be left entirely to the courts that may have to deal with any particular case. What I particularly object to in the definition as drafted is that it has been given retrospective effect from the first day of November 1922, a principle shocking, to say the least of it, to a legally constituted mind. On the faith of the legislation as it at present stands extensive and far-reaching contracts have been brought to being, and these contracts are being attempted to be done away with by one thrust, as it were, of the assassin's dagger. Retrospective legislation, if deemed at all required by circumstances, may be made to take effect from the date of introduction of a Bill in Council and not earlier. If commutation as conceived in the Bill be at all adopted it should be the earnest endeavour of all right thinking men to give the law effect at least 3 years after the legislation. Full reasons I have given in Paper 60 (*see* Extract B at end of note).

5. I do not approve of the principle of compulsory appointment of a common agent to receive notices of transfer of tenures or holdings and the fees payable in respect of such transfers. It is common knowlege that in a small estate or tenure there are such a number of co-sharers that their profits are insignificant and on occasions the property is a losing concern. Further, the common agent is not likely to be a person who can be entirely depended on. Suits for accounts of money received by him will not be few and the cost likely to be incurred in such suits compared with the gain will be prohibitive. The appointment of a common agent then will be tantamount to a compulsory transfer of the fee without consideration and an expensive luxury to petty landholders. The compulsory appointment of a common agent seems to me a very grave innovation sought to be introduced into the law, and the more I have thought over the matter the more have I been convinced of the mischievousness of the proposed measure. The practical effect of this will be that by far the greater portion of the landlord's fee will in the end be forfeited to the Government. Various other objections to this proposal may be put forward, but I do not think I need encumber this note by such dilatation. In short I am absolutely opposed to this proposal. In my opinion the procedure at present in force in the case of transfers of permanent tenures and holdings at fixed rates may be adopted for the cases of transfers of occupancy holdings as well. Objection has been made to the present system on the score of the Collector's office being overworked, but the machinery proposed in the Bill will not only be an equal source of over-work to the office concerned but will also be burdensomely expensive to the poor raiyat, considering the trouble he will have to go through and the various sorts of expenses, legitimate or illegitimate, he will have to incur, added to loss of work and the time he will have to wait upon the officers dealing with his case. He will, to avoid all this trouble, expense and loss gladly agree to the payment of a small percentage for the upkeep of an establishment to send on the notices and the fees to his landlords.

6. With regard to co-sharer tenants, it has been assumed that any landlord may reasonably be expected to ascertain the owners of ¾th share of any tenancy under him. This assumption does not represent the real state of things. Suppose the raiyat of an occupancy holding is a Mahomedan or

an Indian Christian. The wives, sons, daughters and even distant kindred may be among his heirs and a large number of these heirs may be non-resident of the village. Similarly, of a Christian raiyat governed by the Indian Succession Act. His heirs may be many, and many of them again may be non-residents of the village. The landlord may of course go upon the land of the holding and may ascertain who among them are in actual cultivating possession, but it turns out more often than not that the persons in possession only form an insignificant portion of the whole. How is the landlord to shape his course for a rent suit? The whole legislation seems to be based upon the assumption that the whole duty of ascertaining the body of raiyats of all the holdings in his estate or tenure entirely and uncompromisingly lies on him, as if the raiyats have no duty by their landlords with regard to the conveyance of information of successions to the landlord.

7. To sum up the position of the landlord and the raiyat under the proposed legislation :—

THE LANDLORD.

(*a*) The right of vetoing a transfer made without the previous consent of the landlord is sought to be snatched away from him and a right of so-called pre-emption is proposed to be thrust instead. The price to be paid for this sham of a right is the loss of 25 per cent. of the consideration money that the landlord would otherwise have got. The penalty for objecting to a transferee on personal grounds is the payment of a further 10 per cent. from the landlord's own pocket.

(*b*) In the case of a transfer of an occupancy holding, the 25 per cent. of the consideration money hitherto paid as the landlord's *salami* will recede and recede until it will altogether vanish like smoke into the air. An instance may be taken. A holds 20 bighas for Rs. 30 as annual rent. His net profit after deducting the rent and expenses of cultivation is Rs. 5 per bigha or Rs. 100 in all. A sells the land to B and gets Rs. 100 × 10 = Rs. 1,000, of which the landlord will receive 25 per cent. or Rs. 250. Now that occupancy right is proposed to be conferred on under-raiyats A would sublet to B for Rs. 40 as rent and realise from B a *salami* of (Rs. 100 – Rs. 10) × 10 = Rs. 900, of which the landlord would get nothing. Subsequently A sells to B or to somebody else and gets (Rs. 40 – Rs. 30) × 10 = Rs. 100. The landlord receives Rs. $\frac{100}{4}$ = Rs. 25. Thus the landlord's portion dwindles from Rs. 250 to Rs. 25 or from 25 per cent. to 2·5 per cent., which may be made to vanish altogether if a nominal sub-lease is first created and then a few days after a sale is effected.

(*c*) In case of surrender or abandonment the landlord cannot have the benefit of taking into his *khas* possession and under his own cultivation any portion of the holding the raiyat held under his own cultivation, simply because a microscopic portion of the holding happened to have been sublet to an under-raiyat with occupancy right.

(*d*) A landlord does not often mean a big landlord. 'Small fry' are more numerous. The inclusion of a *bhagdar* in the category of a tenant coupled with commutation will either compel the 'small fry' to hold the plough himself or to find himself deprived of livelihood for himself, family and dependants.

(*e*) However small the landlord may be, he must have the luxury of a common agent if he happens to have co-sharers. This means that the larger the number of co-sharers and the smaller the income, the greater the burden of maintaining a common agent. In fact the one principle pervading all through the Bill appears to be that the tenant has no duty by his landlord, and that however hoarse the landlord may cry the one invariable response is "go to Court," a procedure which cannot be beneficial to the raiyat in the long run.

THE RAIYAT.

(*a*) As soon as a raiyat sublets he steps into the shoes of a landlord and makes himself subject to all the disabilities set forth above in the case of a landlord. He would no longer be his raiyati-self, an object of sympathy and protection.

(b) With occupancy right conferred upon under-raiyats and inclusion of *bhag-chasis* in the class of tenants the *mahajan* will no longer have the same interest in purchasing raiyati holdings as he now has. But it should not be forgotten that the *mahajan* is an essential element in Bengal social economy. The effect of the proposed legislation will be in the direction of reducing the value of the raiyati holdings and in reducing the raiyat's credit.

(c) A raiyat who cultivates his own land will not dare, even under temporary pinch of circumstances, either to sublet or to let out in *bhag-chas*. With his credit reduced or gone his capacity to tide over difficulties will also diminish.

(d) The raiyat's time will be divided between the Registration Office, the Civil Court, the Collector and the landlord, leaving him very little time and funds to devote to cultivation.

In short, the effect of the proposed legislation will be enormously to increase litigation rather than diminish it, and to impoverish both the landlord and the raiyat. The Bill, if passed as it is, will prove an ill wind that would blow nobody any good.

8. I now propose to give my views clause by clause.

Bill Clause 3 [*Sec. 1(3)*]—In section 1, sub-section (3), the sub-clause (4) as proposed should be omitted as there is no reason why tenants holding agricultural lands within municipalities should not have the benefit of the Act, specially in view of the fact that the expression "homestead" has been defined in the Bill.

Bill Clause 5 (a) [*Sec. 3*].—The expression "occupant of land" is very vague and it is not understood why it has been introduced seeing that the tenancy legislation should deal with landlords and tenants only.

The addition proposed to Clause (3) should be omitted for reasons given in my note (Paper No. 60).

Bill Clause 5 (d) [*Sec. 3*].—As I am against the proposal of conferring occupancy rights upon under-raiyats, *vide* Paper 60 (*see* Extract B at end of note) the proposed insertion should not find place.

Bill Clause 5 (e) [*Sec. 3*].—The words "or under-raiyats" should be omitted for reasons stated above.

Bill Clause 5 (f) [*Sec. 3*].—I am opposed to the principle of changing the village unit of the Revenue Survey, *vide* Paper 51 (*see* Extract C at end of note).

Bill Clause 6 [*Sec. 4*].— In section 4 as proposed the words "held for ever" should be substituted for the words "not held for a limited time" Paper 51 (*see* Extract D at end of note). Clause (*iii*) of the proposed section 4 should be omitted for reasons given in Paper 60 (*see* Extract B at end of note).

Bill Clause 11 [*Secs. 12—15*].—The proposed changes will prove a fruitful source of litigation, while they serve no useful purpose. The present law regarding the payment and transmission of the landlord's fee is working smoothly and can be further simplified if the registering officer serves the notice and transmits the landlord's fee without the intermediary of the Court.

In the case of succession the wording of section 15 of the present Act may be retained. In the case where there are several landlords the money shall be transmitted to and the notice shall be served upon the co-owner landlord named by the transferor and the landlords among themselves may adjust accounts either amicably or through Court.

A new section as suggested in Paper 51, page 2 (*see* Extract E at end of note) should be added as no provision has been made regarding temporary tenures.

Bill Clause 17 [*Sec. 18C*].—The process of claiming the fee will swallow the whole amount of fees and something more, not to speak of the troubles the operation will entail. It would be cheaper to deny one self the fees altogether than attempt at their realisation.

Bill Clause 19 [*Sec. 22*].—If the right of occupancy is not conferred on under-raiyats certain corresponding changes will have to be made in this section.

Bill Clause 22 [*Secs. 26D, 26K*].—Provision should be made for the transmission of the landlord's fee by money order either by the registering officer or the Civil Court, as is at present done by the Collector. The procedure suggested for the transmission of the landlord's fee on the sale of tenure should be adopted. It may be noted that provision has been made in section 26F for the transmission of the landlord's fee in case of the sale in execution of a decree by Court. There is no reason why similar procedure should not be adopted in the case of a private sale.

[*Section 26F.*]—The apportionment of rent that may be required to be made in certain cases for computing the landlord's fees should not be binding upon landlords, and a provision to that effect seems called for.

[*Section 26G.*]—The deposit is required to be made at the time of making the application or within such period as the Court may fix. It is not understood how these two alternatives can be brought into practical operation. The first alternative should be deleted.

The landlord should be accorded the advantage of the 25 per cent. made payable as landlord's fee in case of a transfer, and as a solatium to the transferee the compensation the landlord may have to pay should not exceed 5 per cent. of the consideration money, as provided in the case of sale under the Bengal Tenancy Act, the Civil Procedure Code, etc.

Bill Clause 25 [*Sec. 40*]—Commutation should not be on the rent "actually received" but on the rent "actually payable" by the tenant. This section should not be made applicable to raiyats holding at fixed rates, and to under-raiyats holding at fixed rents. The provision regarding instalments of premium should altogether be omitted as instalments would be tantamount to depriving the landlord of the solatium that the Bill pretends to give him.

I am altogether opposed to the principle of reducing rent for a premium, *vide* paper 60, Page 5 (*see* Extract B at end of note).

Bill Clause 28 [*Sec. 48.*]—A provision should be added to section 48 to the following effect:—

"Provided that the under-raiyat is a settled raiyat of the village. This section shall come into force three years after the passing of the Amending Act."

Bill clauses 34 and [*35 Secs. 57 and 58.*]—Sections 57 and 58 of the present Act should not be interfered with. The proposed changes unnecessarily lay great burdens upon the landlord without any corresponding benefit. The fee now payable by the tenant should be maintained to cover the additional cost of the landlord, seeing, moreover, that any co-sharer tenant may demand a statement of account and this may entail the preparation of as many accounts as there are co-sharer tenants, whether they choose to pay their rents or not.

Bill clause 44 [*Sec. 69.*]—The words proposed to be omitted should be retained if the provisions regarding distraint be decided to be retained as in my opinion they should be.

Bill clause 45 [*Sec. 73.*]—This section should be retained to avoid difficulty in the case of a sale effected close upon the sun-set day.

Bill clause 47 [*Secs. 76 and 79.*]—The word "suitable" should be retained as meaning suitable to the holding.

Bill clause 48 [*Sec. 76.*]—The provision for the purpose of providing drinking water for the tenant or his family seems nugatory, as no such tank can be excavated on a small plot of land. On the other hand it will become a source of nuisance. If any concession in this respect be accorded to the the raiyat it should be in the shape of wells.

Bill Clause 54 [*Sec. 85*].—The proviso proposed is unnecessary if my suggestion in Paper 51 on sections 165, 166, 167 and 168 (*see* Extract F at end of note) be accepted. On principle the proviso should not be made applicable to under-raiyats holdings entered into by registered instruments before the 1st of November 1922.

Bill Clause 55 [*Sec. 86A*].—This section seems not to be clearly worded and as it stands it seems to add nothing to the present law. On the contrary it introduces a good deal of confusion into the present law. Sub-section (*2*) should therefore be omitted.

Bill Clause 57 [*Sec. 87A*].—The proposed section 87A seems inequitable. Suppose there is a holding consisting of 20 bighas held by an occupancy raiyat on an annual rent of Rs. 10. He sublets 1 bigha out of it to an occupancy under-raiyat at an annual rental of Re. 1. The raiyat abandons the holding. The effect of the proposed amendment would be that the under-raiyat will be entitled to purchase the complete occupancy right in the holding on payment of Rs. 60 only to the landlord, *i.e.*, he gets 19 bighas for Rs. 60 only. In the supposed case if a non-occupancy under-raiyat held 12 bighas on a rental of Rs. 24 the occupancy under-raiyat of 1 bigha will be entitled to oust the non-occupancy under-raiyat, and wiil have the whole holding for Rs. 60 only The most equitable provision should be such that the landlord may reap the benefit of the abandonment and the occupancy under-raiyat may not be prejudiced thereby, which is to say that he will retain his portion of the holding as an occupancy under-raiyat on payment of a fair and equitable rent to the landlord, in which case his status will be raised from an under-raiyat to a raiyat.

Bill Clause 63 [*Sec. 99A.*]—The legislation proposed in this clause seems uncalled for. There are a very large number of estates and tenures the rental of which does not cover the revenue or rent payable for the same and the pay of an agent. The proprietors or the tenure-holders as the case may be do the work of collection themselves. The compulsory appointment of a common agent for such estate or tenure would be an absolute infliction on them.

Bill Clause 90 [*Sec. 146B*].—"Before the trial of the suit has commenced" should be substituted for the words "before the hearing of the suit has been completed."

Sub-section (*3*) seems to have been based upon a misconception, to the effect that the sale was initially as if it were a sale in execution of a money-decree and the auction purchaser did not pay the full market value of the holding, though this result transpires only after the suit or proceeding in which the question has been litigated. This sub-section should be redrafted so that the purchaser shall not have to pay any additional amount, while the aggrieved co-sharers should participate in the purchase money according to their shares.

Bill Clause 94 [*Sec. 148A*]—No provision seems to have been made for the case where some of the co-sharers may combine with the tenants to oust a certain co-sharer whose name therefore is not at all brought out before the Court.

Bill Clause 95 [*Sec. 153*].—In the proviso proposed the words "from the decree or order in which no appeal lies" should be deleted. The procedure in rent suits is a summary procedure. The Court takes only notes of evidence and does not record the evidence *in extenso*. The appellate Court therefore is often unable to make a proper estimate of the evidence and therefore the decision on a question of title is generally unsatisfactory. But if a regular suit for establishment of title is brought the Court is bound to record the evidence *in extenso* and the appellate Court is in a position to make a proper estimate of the evidence.

Bill Clause 98 [*Sec. 158A*].—The amendment proposed to sub-section (*2*) of 158A seems uncalled for specially in view of the fact that the words "and in which such record is maintained" in sub-section (*1*) are omitted It will moreover only hamper the hand of the Local Government.

Bill Clause 102 [*Sec. 161*].—I am quite agreeable to the legislation proposed in this clause with the rider that the sale in execution of decree for arrears of rent to which the person in adverse possession is not a party will carry the whole tenure or holding, including the interest of the person in adverse possession.

Bill Clause 109 [*Sec. 178*].—Section 178(*e*) requires further consideration. There may be circumstances in a particular case which may justify a landlord in being entitled to a higher proportion of the gross produce.

Bill Clause 113 [*Chap. XVA*].—The word "hybrid" in hybrid tenures may be replaced by the word "anomalous". This section aims at giving rights to tenure holders which they do not possess under the present law and at depriving the landlords of rights which they do. It should always be remembered that these rights are the offspring of the present law and the parties entered into contracts which are the basis of these rights with a full knowledge of the position as the law conferred upon them. Rights thus created on the faith of the existing legislation should not be disturbed before giving the parties sufficient time, say 3 years, to adjust their relations.

The power to extend the section by notification to places other than Rangpur should not be conferred upon the Local Government, as several matters and circumstances may have to be discussed before such power can be, used and as the proposed section will be discussed in Council before it can be enacted into law the matters and circumstances concerning other places should also be similarly discussed in Council before its extension.

Bill Clause 114 [*Sec. 185*].—The reference to sub-section (2) of section 29 of the Limitation Act does not seem to be clear.

Bill Clause 117 [*Sec. 195 (e)*.]—*Khodkhast* raiyats are resident and heriditary cultivators of a village, while an occupancy raiyat may reside in one village and cultivate land in another. The expression *Khodkhast* raiyat cannot therefore include all occupancy raiyats. The law as it stands should remain.

Extract A.

All the landlords object to under-raiyats being given occupancy-rights, and it may be said that the landlords object very rightly. Restrictions on enhancement of rent result in subinfeudation as long as there remains sufficient margin of profit and competition for land. Sub-infeudation again creates problems of status. A dual status is sure to lead to legal complications, and is prejudicial to the interests of the landlord as well as to those of raiyats. Apart from the objections raised by the landlords a tenancy at its inception is a matter of contract between the lessor and the lessee. The character of the tenancy and therefore of the contract should not be changed without the consent of the parties. Nor does it change by lapse of time. In the long run presumptions as to tenures and holdings will have to be extended to raiyats and under-raiyats. The Secretary to the Committee rightly observed that it was undoubtedly necessary to discourage the sub-letting of the whole holdings in substitution for transfer. No occupancy-status need be given to under-raiyats.

Extract B.

Among the most important features of the proposed amendment of the Bengal Tenancy Act are the conferment of the right of transfer of their holdings to occupancy-raiyats and conferment of the right of occupancy to under-raiyats. These two apparently distinct subjects are so closely connected with each other that I propose to deal with them together.

Those who advocate the cause of occupancy-raiyats want to make holdings with occupancy-rights freely transferable, and by so doing they believe that they are making such raiyats owners of property, their right of transfer not being dependant upon the landlord's pleasure. Apparently this is giving them a substantial interest in the land in one sense, and this may have the effect of raising them in their own estimation, they being regarded as having entered the class of the landed interest of Bengal. But this question needs must go with the other proposition by which it is intended to give under-raiyats right of occupancy in the land held by them under occupancy-raiyats. To give a concrete example, suppose A, an occupancy-raiyat, holds a holding of 50 *bighas* bearing a rental of Rs. 100. He wants to sell it. In the present state of the law under-raiyats having no occupancy-status, the holding may be regarded as in the direct cultivating possession of the raiyat. In these circumstances, suppose (and this supposition is a moderate one) the price which each *bigha* will fetch is Rs. 100. The price would thus come to Rs. 5,000. The purchaser will have to pay Rs. 1,250 to the landlord as the landlord's fee, and this he will deduct from the price. The occupancy-raiyat thus gets Rs. 3,750 for his holding. Now then the proposed law gives right of occupancy to under-raiyats, and suppose the holding is sub-let to under-raiyats fetching a rental of Rs. 150. Under-raiyats having right of occupancy cannot be ejected by the purchaser, and under this circumstance what would be the price of this holding? The income is Rs. 50 a year, and at 20 years' valuation the price would be Rs. 1,000, out of which the superior landlord gets Rs. 250, leaving Rs. 750 only to the raiyat. Now, I ask which position would the raiyat prefer? He would certainly prefer his present position rather than be ruined by accepting the position the law now proposes to offer him. The conferment of occupancy-right to under-raiyats has thus the effect of

considerably reducing the value of occupancy-holdings; *a fortiori*, therefore, it will fetch less value in the case of mortgage. Another circumstance may also be here considered. Many persons have paid considerable sums upon the faith of the existing law that under-raiyats are ejectible. Would it be at all fair to these people to reduce the value of their property by one stroke of the pen? If you give the right of free transfer to the occupancy-raiyat, do not give right of occupancy to the under-raiyat, for in giving this right to the under-raiyat you only ruin the occupancy-raiyat. Further, the proposed amendment materially trenches upon the superior landlord's rights as his income will be materially curtailed—

(1) by giving the occupancy-raiyat the right of free transfer;

(2) by giving the under-raiyat right of occupancy in the land held by him.

By the first he is deprived of his right to make the transferred holding *khas*; by the second the pittance of landlord's fee on transfer of an occupancy-holding is greatly reduced.

2. It may be said in answer to the above observations that the proposed enactment does away with the limitation of rent of under-raiyats, leaving the parties to fix as high a rent as they may choose upon the under-raiyati holding. But it should be considered that, however high the rent may be fixed, it can never reach the price of the paddy that is likely to be grown on the land. The above observations therefore equally stand good even in the case of the abrogation of the sections regarding the limitation of rent of under-raiyats.

Then I have a word or two to say on the proposition that a raiyat at fixed rate of rent should be given the status of a settled raiyat where he complies with the requirements of section 20. Indeed the same difficulties will arise as in the case of the conferment of occupancy-right to under-raiyats even in this case. Suppose A, a *putnidar*, lets out certain lands as a *mokrari mourasi* holding to B for a big *salami* on a nominal rent or to a near relation of his for a nominal rent as is not unfrequently the case. In case of the *patni* being sold under Regulation VIII of 1819, the purchaser gets it free of all encumbrances created thereon by the defaulting *putnidar*. In the present state of the law, this *mokrari* being an incumbrance is *ipso facto* annulled by the sale, but as occupancy-right may be acquired by the raiyat being a settled raiyat of the village, he cannot be ejected and the purchaser is only entitled to the nominal rent reserved. It may be argued that he may enhance the rent under the provisions of the sections relating to the enhancement of rent of occupancy-raiyats. It is submitted that these provisions, for the most part, will not apply to such cases, especially as the chapter on occupancy-raiyats deals with a special class of raiyats and not the other classes, viz., raiyats at fixed rates or non-occupancy raiyats or under-raiyats, and this brings me to the case of the general scheme of the Act. The Bengal Tenancy Act, as it at present stands, divided raiyats into certain classes and these classes are exclusive, one separate chapter being allotted to each to prevent confusion and overlapping. An amending Act should keep the original scheme intact and only introduce amendments consistent with the scheme of the original Act. Simply because occupancy-right is conferred upon raiyats at fixed rates and under-raiyats, only as an incident, that does not make these other classes occupancy-raiyats attracting all the provisions of the chapter on occupancy-raiyats to these classes. These classes of raiyats should be treated separately and exclusively of each other as has been done in the main Act. The High Court no doubt have held that, under certain circumstances, a raiyat at fixed rates may acquire occupancy-right but that does not mean that all raiyats at fixed rates will acquire occupancy-right, as is sought to be given by the proposed amendment, and further that is no reason why this decision should be given legislative effects, if the general policy of land legislation of the Government does not agree with the view; rather than give occupancy-right to raiyats at fixed rates, a provision should be made to avoid the effect of the High Court Ruling, viz., that raiyats at fixed rates shall have no occupancy-rights. This creates no hardship on the raiyats at fixed rates, considering that this provision will apply only to raiyats at fixed rates created by contract between the raiyat and the landlord for the time being. Raiyat's holdings existing from the time of Permanent Settlement are saved both by the Revenue Sale Law and as protected interest by the Bengal Tenancy Act. The suggestion is made only to prevent the consequences flowing from the settlement of rent at an abnormally low rent for some consideration of which the purchaser at revenue or rent sale cannot possibly partake.

3. Then I propose to discuss the question of commutation under section 40 of the Act. Mr. McAlpin has written a learned and elaborate note on the question of commutation regarding *bhagchasis*, *bhagdars*, *burgadars*, *bataidars* and *adhiars*. I regret I have not been able to follow the arguments he offers in the cause of the *burgadars*, *bhagchasis*, etc. Shortly he contends that the classes known in the different parts of the province as *bhagchasis*, *bhagdars*, *burgadars*, *bataidars* and *adhiars* should be classed as raiyats and should be accorded all the rights and privileges of raiyats. In advocating their cause he seems to take it for granted that the various names given above are but *aliases* of one and the same class of persons. This, I think, is not a very accurate statement of the real position. Bengal is a large country and it is well known that different local customs prevail in different districts, nay, in different villages in the same district.

I should think that each case will be governed by its own merits and the Civil Court will give the *burgadar* or by whatever name he may be called, the status of a raiyat, if the evidence justified the conclusion and will not give him that status if the evidence in the case led otherwise. The notes on pages 4, 5, 19 and 64 of Mr. Sen's work on Bengal Tenancy may usefully be referred to on this subject.

Then to come to the rulings referred to by Mr. McAlpin, viz.,—

14 C. W. N. 629

23 C. W. N. 614

19 C. W. N. 1,205

21 C. W. N. 505

Upon a close study of the first case I find that the plaintiff's case was that the *jote* "had been taken in *burga* settlement by the principal defendants" and the case was brought in the Small Cause Court. This case would lie in that Court only if the defendants were not the plaintiff's tenants, otherwise it would lie as a rent suit in the regular Civil Court. The plaintiff, therefore, evidently understood that the *burga* settlement was only a labouring contract. The defendants pleaded that "they had never taken a *burga* settlement of the plots in question". Thus the parties agreed as to the meaning of the expression "*burga* settlement" and the defendents wanted to get rid of this liability by altogether denying this settlement. The Small Cause Court Judge in reporting the case to the High Court said, and said distinctly, "the term *burgadar* in this district is ordinarily understood to mean a cultivator, who, under the terms of the contract, is a servant or a labourer under the holder of the land". We thus come to this position.—

(1) *burgadar* in the district means a servant or labourer;

(2) plaintiff says the defendants took a *burga* settlement.

∴ the defendant was a servant or labourer.

∴ the case lay in the Small Cause Court.

This case, therefore, shows that the word "*burgadar*" in the district of Pabna does not connote a tenancy. A *burgadar* in Pabna cannot then be given the status of a raiyat.

The second case, that reported in 23 C. W. N. 614, went upon the terms of the contract, and thus supports my view that the agreement between the parties must govern the relation.

Mr. McAlpin says that the tenancy was a *dhankarari* tenancy. This is more than I can say in the teeth of the finding of the High Court. The High Court says it was not a tenancy but a labouring contract. It would thus be unavailing to persist in calling that a tenancy which the High Court has called a labouring contract.

The third case, that reported in 19 C. W. N. 1205, also supports the view I entertain, viz., the evidence in the case governs the relationship. The Judges say the question, which is raised, is whether the *adhiar* is a tenant or a labourer. If he is a tenant, then his possession would be protected under section 9; if a labourer, it would be otherwise. In the first place there is no affidavit before us that an *adhiar* in this part of the country means a "labourer" and not a "tenant". There is, on the contrary, a statement in the affidavit that the land was let out to the plaintiff as "*adhiar*," which term is appropriate to the existence of a tenancy. The various books upon the subject which were referred to show that very largely an *adhiar* is a "tenant". The expression "very largely" clearly implies that in some cases, at any rate, an *adhiar* is not a tenant. Thus the High Court upon the evidence in the case came to the conclusion that the *adhiar* in that particular case was a "tenant".

I come lastly to the last case referred to by Mr. McAlpin, viz., that reported in 21 C. W. N. 505. Mr. McAlpin quotes a portion of Teunon, J.'s judgment. The Senior Judge Fletcher, J., said:—"*Bhagchasis* are persons who cultivate land rendering a share of the produce to the landlord. They may or may not have any interest in the land, but are not hired servants, etc." This means where one has an interest in land, he may be a raiyat; where one has not, he is not a raiyat. This case again supports my idea that local custom or agreement is the governing element in every case. Teunon, J.'s statement quoted by Mr. McAlpin is also based upon the evidence given in the case. We generally find loose language used in describing legal relationship. This should be carefully avoided. Where the *burgadar* according to the local custom or agreement is a tenant, the other party would be the landlord; where, however, according to local custom or agreement he is not a tenant, the other party cannot be described as the landlord. The language used must strictly conform to the exact legal relation that subsists between the parties whether by local custom or agreement. Loose language, even in high judicial utterances, is at the bottom of much misconception in the appreciation of legal relationship.

Regarding *burga* system, Mr. McAlpin prefers three grounds for his proposition.

He says :—

(1) That "*burga* is an uneconomical and wasteful method of cultivation. The tenant does not trouble to cultivatethe land as well as his cash-rented lands". Now this may happen where he cultivates both sorts, but where all his lands are held by him under the *burga* system, this apprehension has no place. Mr. McAlpin means, as I understand him, that such lands are deteriorating in productive power. To examine this ground a little closely, if these lands are deteriorating in productive power, the owner is the loser, the *burgadar's* loss is confined to the particular year in which he does not properly cultivate the land and his loss is due to his own neglect, while the loss to the owner is more permanent than his and due to the *burgadar's* fault. If the owner notwithstanding the loss chooses to have his land cultviated by such a cultivator, there is no help for it. Suppose the owner chooses not to let out the lands at all and keep all fallow. Neither the law nor anybody can prevent his doing that. The cultivation by a *burgadar* is less uneconomical than leaving the lands altogether uncultivated. If the law gives to the *burgadar* the rights of a raiyat, the result in all probability will be that the owner will only cultivate by his own plough or by hired labour so much of his lands as will fetch the produce he would have got by having all his lands cultivated by *burgadars* together with the cost of cultivation, and will leave his remaining lands altogether uncultivated. It will thus be seen that the *burga* system is likely to prove less uneconomical than the other course. To consider the question from the *burgadar's* standpoint, if the owner takes the course supposed and leaves a portion of his land fallow, the result to the *burgadar* will be that he and his family will have to go without the means of livelihood which he would have derived by cultivating the lands on the *burga* system.

(2) That "it is extending". There is not only no harm in the extension of this system of cultivation but it is conducive to the general prosperity of the country. People who cultivate on the *burga* system secure their means of livelihood, while otherwise the owner cultivating a sufficient portion of his lands and leaving the rest fallow for the year, the *burgadar* is deprived of livelihood for himself and family. The *burga* system thus helps more the *burgadar* than the owner and so conduces to the welfare of the landless class.

(3) That "there is a growing endeavour to try and get *burga tenancies* regarded as labouring contracts". There is no such endeavour ; where the *burgadar* is a tenant, he gets his rights as such ; where he is not, he cannot get a tenant's right. Where the *burgadar* by the terms of his contract is a tenant, the settlement may be styled a tenancy ; where he is a labourer, there is no tenancy. To indiscriminately describe *burga* cultivation as *burga tenancy* is a misuse of language which should be carefully avoided in formulating legal conceptions.

Mr. McAlpin wants to enact a presumption in favour of the specific classes called *bhagchasis*, *bhagdars*, *bataidars*, *burgadars* and *adhiars* being considered tenants with the proviso that they are not dependent upon the lessor for the supply of the implements of cultivation of the land. In the first place the presumption would be most unfair so far as the landlord is concerned, because in whatever capacity he may come before the Court, whether as plaintiff or defendant, applicant or opposite party, he will have to rebut the presumption that the *burgadar* is a tenant. The law of burden of proof is plainly laid down in the Indian Evidence Act and no exceptional rule of law need be made. The circumstances of each case and the pleadings of the parties will settle upon which party the burden of proof will lie in a particular case, and the general principles of the law of burden of proof will prove a sufficient safeguard in all cases. The common agreement between the parties is that the owner pays rent for the land and the other impositions on it, and the cultivator finds the implements of husbandry and the labour. The supply of manure forms a subsidiary contract ; generally the landlord supplies the manure, the cultivator supplies the cartage. The terms slightly vary in different localities. Strictly speaking, the *bhagdar* does not give a share of the produce of the land to the owner, but really the position is the other way, viz., the *bhagdar* gathers the produce on a spot indicated by the owner and there it is threshed and the owner gives the agreed proportion of the produce to the *bhagdar* as the price of his labour ; in other words, he is paid for his labour in kind and not in money. The owner would have no objection to paying him in money, but that makes no difference ; it is only a question of additional transaction, for, if the owner pays the *bhagdar* in money for his labour, he immediately wants to purchase the produce for the money and the owner sells the produce to the *bhagdar* for the money. I should, therefore, prefer to leave the law as it is, leaving to the Civil Court the task of deciding the particular point in each case upon local custom and contract.

"Of the suggestions which have been made to make the section workable," says Mr. McAlpin, "that involving the payment of *salami* or a commutation-fee to the landlord where there is a material difference between the amount given as rent and the rent finally settled is one which appears to give the best promise." With much diference I am inclined to think that this suggestion does not take into consideration certain contingencies to which I refer below. The payment of a *salami* may be a solatium to the landlord for the time being, but in the case of a sale of the landlord's interest, say, at a revenue-sale, the purchaser only gets the reduced rent and is a loser in consequence. To take an extreme case, suppose a whole village paying a Government revenue of Rs. 100 is

cultivated on the *burga* system and suppose by commutation the rent-roll is settled at Rs. 75 only, giving a substantial *salami* to the landlord or none. The landlord defaults in the payment of revenue and the estate is sold up. The auction-purchaser gets Rs. 75 a year, and he has to pay Rs. 100 to Government. This estate, therefore, is bound ultimately to become the *khas* property of Government as no bidder will be forthcoming to purchase it as soon as the real state of affairs comes to be known. Commutation therefore may in some cases at least lead to the detriment of the public revenue. It may be laid down as a general proposition that the security of the Government revenue depends upon the rent-paying capacity of the land, and the more you reduce the landlord's income by so much the security for Government revenue is jeopardised. It is not therefore to the interest of the land revenue due to Government that commutation should be largely allowed.

Experience in Bihar shows what hardships have in certain instances been the result on landlords by commutation. There have been instances in which a landlord's income has been reduced from, say, Rs. 50,000 to Rs. 25,000 mainly by commutation. *The principle of commutation should altogether be abolished, rather than it be given extended application by legislation.* The custom of paying labour in kind dates from time beyond memory. The East is more governed by custom and usage than hard and fast rules of law. Custom or usage is a natural growth depending upon surrounding circumstances, and it changes with the change of its environments. To attempt to do away with custom by strict legislation is bound to be a failure. The modern tendency to arrest or do away with the growth of custom and usage is doomed to die an almost instantaneous death. As the Hindu Law-givers have said "custom overrides the written text of the law." In the East before the advent of the British all labour used to be remunerated in kind. *Chakran* lands bear testimony to this custom. There were *chakrans* of watchmen, of *paiks*, of barbars, of washermen, of those who supply the materials for *pujas*, and these *Chakrans* still exist in their pristine vigour in the mufassil. Let therefore customs grow as they have ever grown, and let the hoary rule of the Hindu Law-givers quoted above be the guiding principle in all relations between landlord and tenant.

Extract C.

SECTION 3, CLAUSE (*10*), SUB-CLAUSE (*b*).—*Village.*—In the last part *insert* "as is comprised in a village as is locally known and where there is no local name such area" between "such area" and "as the Collector, etc., etc." *Omit* definition as given in Eastern Bengal and Assam Act.

The village is the administrative and fiscal unit, and any changes made in that unit cannot but end in innumerable difficulties affecting the rights and liabilities all through, from the Government down to the cultivator. Hence it is absolutely necessary that the unit adopted in the revenue survey should continue undisturbed. Section 207 Chapter II of the Bengal Survey and Settlement Manual, lays down that "the village" according to the revenue survey is to be taken as the unit of survey as far as possible The circumstances in which different units may be adopted, or villages formed, *when there has been no revenue survey*, are given in Appendix R and the procedure is given in rule 225.

Extract D.

SECTION 4.—*Permanent tenure.*—*Substitute* "which is held for ever" in place of "which is not held for a limited time."

For stamp duty leases are classified as held—

(1) for a limited time;
(2) for indefinite time;
(3) as permanent;

The definition as it stands may include tenures held for indefinite time. Hence is the necessity for the change. The words "for ever" are borrowed from Regulation I of 1793.

Extract E.

SECTION 13, CLAUSE (*1*).—*Tranfer of permanent tenure by sale in execution of decree.*—To *delete* "section 312" and *substitute* "rule 92, order 1, schedule I." *Add* a new section 17A—

"A tenure-holder other than a permanent-holder shall be subject to the same provisions with respect to the transfer of and succession to his tenure as the holder of a permanent tenure in the absence of an agreement or local or special law, or established usage to the contrary. The holder of such a tenure shall not by reason of such transfer cease to be subject to any of the liabilities attaching to the lease."

Extract F.

SECTIONS 165, 166, 167 AND 168.—*Sale to avoid incumbrances.*—In clause (*1*) *substitute* "free of" in place of "with power to avoid" and *make* consequential changes. The same changes in sections 166, 167 and 168. *Omit* clause (*2*).

Note of dissent by Babu Brojendra Kishore Ray Chaudhury.

I sign this report subject to the following note of dissent. It relates chiefly to (1) the transfer by sale of occupancy holdings and extension of occupancy rights to under-raiyats, (2) the practical abolition of the *barga* or *bhagi* system and provisions regarding commutation, (3) some points regarding the procedure for realisation of rent, and (4) the conversion of non-permanent tenures of Rangpur into permanent tenures.

TRANSFER OF OCCUPANCY HOLDINGS BY SALE AND EXTENSION OF OCCUPANCY RIGHTS TO UNDER RAIYATS.

It is useful to recall that the question of attaching the right of occupancy to all raiyati lands, and that of allowing free transfers of occupancy holdings, are not matters of mere recent history. These proposals came up for the consideration of the Government of Bengal, the Government of India, and the Secretary of State upon the report of the Rent Commission in 1880. And the provisions embodied in the Bengal Tenancy Act of 1885 are a final result of the mature deliberation of these authorities upon the *pros* and *cons* of the questions. It will be remembered that Act X of 1859 for the first time conferred the right of occupancy on certain raiyats on the basis of the rule of 12 years' residence, and its effect according to Mr. Justice Field was that a large number of tenants who, before the Act were mere tenants-at-will and so liable to be rack-rented, at once acquired a protected tenure. When the Government of India, in their despatch of March 1882, proposed to the Secretary of State that occupancy right should be attached to all raiyati lands, the Secretary of State demurred to this proposal. And in declining to sanction it, he stated that the proposal involved a great and uncalled-for departure from both the ancient custom and the existing law of the country. The Government of India defended their proposal in a subsequent despatch in October 1882, but the Secretary of State adhered to his former opinion This finally disposed of the proposal for extending the right of occupancy to all raiyati lands, and it was not heard of till the present committee came to revive it. Similarly, the proposal for allowing free transfer of occupancy holdings was deliberately negatived by the legislature in 1885.

In briefly relating this chapter of the history of tenancy legislation in Bengal, it is my intention to emphasise the fact that when the Bengal Tenancy Act was placed on the Statute Book, as a corollary to the permanent settlement, after subjecting the prevailing condition of things, the rights and privileges attaching to tenancies and the long established custom of the country, to the closest scrutiny, the highest legislative authority in India finally prescribed the relations of landlord and tenant in a manner from which no departure would be justifiable, except on grounds of overwhelming necessity or impelling public policy.

A representative of the interests of the landlords would, in this view of the matter, be justified in opposing any change in the tenancy legislation in the two particulars mentioned above. But it is not my intention to be obstructive, if it is found that in the present legislative proposals there are advantages in detail which compensate the landlord to a reasonable extent for the large concession which he is asked to agree to in matters of principle.

The right of free transfer which the proposed legislation would confer on raiyats in respect of occupancy holdings, is undoubtedly a change of a fundamental character. And before a landlord can be a consenting party to such a change, he should be assured of the continuance of the most important privileges which he enjoys under the existing system. It is proposed, no doubt, that the *salami* or transfer fee will be compulsorily payable to the landlord at a uniform rate, which at first sight suggests that the new arrangements will cause very little financial loss to him. The landlord will also have the right of pre-emption, enabling him, when he so chooses, to refuse to recognise a transferee. Had these proposals stood alone, there would not perhaps have been much ground for complaint from the practical point of view. But these are unfortunately accompanied by new provisions about the status and privileges of sub-lessees which in effect neutralise the benefits of these proposals.

Sub-lease under the proposed conditions will become a much more preferable arrangement, from the point of view of the raiyat, than a transfer, and will be invariably availed of in preference to the latter. In case of a transfer there is the risk of pre-emption by the landlord, but there is no such risk in a sub-lease, a *salami* of 25 per cent. has to be paid to the landlord in a transfer, but in a sub-lease no such payment is required. In a transfer of a part of a holding the transferee remains jointly responsible with the transferor to the immediate landlord for the rent of the portion that remains with the transferor, but in a sub-lease the sub-lessee is responsible to the raiyat only for the rent of the land sub-let to him, the transferee does not attain occupancy status unless the transferor has got it himself, but in the case of a sub-lease, whatever the status of the lessor, the lease always carries occupancy right along with it. In a sub-lease there is no doubt the risk of ejectment by the superior landlord when the holding of the immediate landlord is sold for arrears of rent; but the transferee is also similarly affected when the transferor defaults. But the sub-lessee and the transferee can both avoid this by paying the landlord's dues and recouping them with interest by contribution suit. In a sub-lease, in particular, it will be the natural inclination of the court to set aside rent-sales on the application of any one of the under-raiyats, whose interests are affected by the sale, in the chain of under-raiyati tenancies when any large number of persons would be found involved.

There is, however, one disadvantage in a sub-lease. There is the risk of ejectment by the superior landlord in certain cases of transfer by the immediate landlord. But this is a remote contingency which can hardly receive any serious consideration from the tenant.

About two-thirds of the costs that the landlord incurs in rent suits (these costs swallow up over 10 per cent. of his gross income) always remain unrealised. He has to maintain an expensive staff the cost of which daily increases. He is to some extent compensated for all these by the *salami* he receives in transfers. But the proposed arrangement, by depriving him of this source of income, will cripple him seriously.

The extension of occupancy right to under-raiyats should also be opposed on other grounds. It will increase sub-infeudation to an unlimited degree and vastly enhance the complications in the land system of the province. It will increase the difficulties in the realisation of rent and multiply suits. Sections 66 and 49 will no longer assist the raiyat in his collections of rent from under-raiyats. He has not the resources of the landlord, and expensive rent suits will not in most cases be possible for him to undertake. The difficulties arising out of non-joinder of defendants have been to a great extent removed in the proposed legislation, but no remedy could be found for non-joinder of plaintiffs, which would in many instances be inevitabe. In the case of Muhammadan raiyats, in a vast majority of cases, a rent suit will be hardly possible, and default in the payment of the superior landlord's dues will inevitably follow. In certain respects, greater advantages have been attached to the status of an under-raiyat than the law has ever given to the raiyat. A raiyat can only acquire occupancy right by twelve years' residence in a village, but under the proposed legislation a new-comer would get occupancy right in a village the moment he secures a sub-lease. It is one of the objects of the present legislation to prevent rack-renting. But the omission of section 48(*a*) and (*b*) has removed the only restriction in the case of a sub-lease to excessive enhancement of rent.

BARGA.

Clause 5 of the Bill.—The practice of supplying implements of agriculture, ploughs, and cattle by landlords to *bargadars* is nowhere in existence now. The provision, therefore, of sub-clause (*a*) in clause 5 of the Bill, will convert almost the whole of the lands which are cultivated under the *barga* system into raiyati lands. It will seriously disturb the existing state of things and the economic condition of the country. My friends in the Committee, who support the proposed change, do so on the assumption that the *barga* lands do not yield as much crop as the ordinary lands and the system involves uneconomical and wasteful methods of

production. I am afraid this assumption is based on insufficient materials, and they have failed to make out their case on this point.

In my opinion, no exception can be taken to the *barga* system on economic grounds. On the contrary, this class of land is an important subsidiary means of livelihood of a large body of middle class *bhadraloks* all over the province, who may otherwise lose all interest in their village homes and gradually migrate to towns—a circumstance which will very materially affect the rural conditions of the country. It is these bits of *khamar* land which enable the middle-class or intellectual portion of the village community to exist and to carry on their different avocations. The proposed exceptions in favour of contracts made before the 1st November 1922, and in cases where the rent in kind is mainly required for the subsistence of the landlord and his household, will not be of much practical value. The class of people who represent the bulk of *barga* landowners, and will be most adversely affected by the wholesale operation of the commutation rule, are generally those who had not the foresight to safeguard their interests with the help of regular contracts, nor can they be expected to successfully oppose an application for commutation by satisfying a Revenue officer that the circumstances justify the exclusion of the *barga* lands from commutation proceedings. If all these *barga* lands were at once converted into cash paying holdings, the economic distress among a very important class of the community would be considerable and would lead to political discontent.

The landlord does not want this departure from a long established custom. The middle-class does not want it. It has not been supported by the spokesmen of the tenants. The system is working smoothly, and does not call for that interference on the part of the legislature which is considered necessary in the case of transfers of occupancy holdings.

Apart from the question of principle, the definition in sub-clause (*a*) of clause 5 is objectionable on other grounds as well. The word "occupant" in the definition would include an usufructuary mortgagee and a service tenure-holder, who are outside the scope of this Act. Any change in the existing law which might permit the creation of tenancies under service tenure-holders would seriously affect the position of the zamindars.

There is another phase of the matter which may incidentally be mentioned. *Barga* lands when converted to raiyati lands under the provisions for commutation, would lead to a serious decrease in the Road Cess Fund. The present Road Cess assessment is made on an annual value of Rs 18 per acre for *barga* lands. The annual value of raiyati lands does not ordinarily exceed Rs. 5 per acre. The *barga* lands form 10 per cent. of the total quantity of arable lands in the Dacca district. One hundred acres of arable land in this district would, therefore, include 90 acres of raiyati land and 10 acres of *barga* land. The annual value of the 100 acres would be 90×5 *plus* 10×18, *i.e.*, Rs. 630. By commutation, the *barga* lands being converted into raiyati lands, the annual value of 100 acres of land would be Rs. 500. This means a decrease of 20 per cent. in the Road Cess Fund for the Dacca district. In other districts there will be a proportionate diminution according to the quantity of *barga* lands.

For all these reasons I am definitely of opinion that sub-clause (*a*) of clause (5) should be omitted, or in its place the following should be substituted :—

"A person who cultivates any land under the *barga* or *bhag* system and receives a proportion of the crop in lieu of wages is not a tenant."

I am further of opinion that for similar reasons section 40 of the Bengal Tenancy Act should altogether be repealed.

SOME POINTS RELATING TO THE PROCEDURE FOR REALISATION OF RENT.

Clause 93 (h).—After clause (*e*) in section 148 the following should be added as (*e*) (*1*) :—

"When a written statement is accepted by the court, it shall award the costs of the suit on the contested scale."

It often happens that the defendant continues the case for a long time on one plea or another, and then does not appear at all at the final hearing. In such cases *ex parte* costs are allowed by the court. The landlord in such cases has unnecessarily to incur heavy costs in producing his evidence, oral and documentary, and in pleader's fees, for which he should be compensated.

Clause 94.—The following should be added as clause 94A :—

"For section 150 of the said Act the following shall be substituted namely :—

"Where a defendant pleads that the whole or any portion of the amount claimed by the plaintiff on account of rent has been paid, the court shall refuse to take cognizance of the plea unless he specifically declares the amounts which he has paid towards satisfaction of such claim and files rent receipts as provided in the Act for the same and pays into court the balance, if any."

In section 150 there is a provision for deposit. But the tenant avoids it by invariably pleading that nothing is due by him to the landlord, and prolongs the case, on the most flimsy grounds, often for years.

Clause 107.—After clause 107 the following should be added as clause 107A :—

"For section 171 the following shall be substituted namely :—

"Notwithstanding anything contained in Order 21, Rules 89 and 90 of the Code of Civil Procedure, where a tenure or holding is sold for arrears of rent due thereon, the judgment debtor or any person owning the property or a share thereof or holding an interest therein or whose interests are affected by the sale, may, within 30 days from the date of sale or from the date of the knowledge of sale, apply to have the sale set aside on his depositing in court for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to five per centum of the purchase money.

"Provided that no sales shall be set aside if the deposit is made after 30 days from the date of sale unless the applicant proves :—

"(*a*) that there was material irregularity or fraud in publishing or conducting the sale by which the applicant has sustained substantial injury,

"(*b*) that the judgment debtor had no saleable interest in the property sold."

There is provision for setting aside the sale by deposit within 30 days from the date of sale (section 174, Bengal Tenancy Act and Order 21, Rule 89, Code of Civil Procedure). But there is no provision for deposit when the judgment debtor or other persons come forward after 30 days to set aside the sale under Order 21, Rule 90. As the latter case requires no deposit the tenant invariably avails himself of this. Sometimes, years after a holding is sold the judgment debtor or his mortgagee appears and without making any deposit succeeds in getting the sale set aside on the most trifling grounds, taking advantage of the over leniency of the court in this respect. It is with a view to avoid this and enforce deposit in all cases that the provisions of section 174, Bengal Tenancy Act, and Order 21, Rule 90 of the Code of Civil Procedure have been combined.

The following further proviso should also be added :—

"Provided also that no sales should be set aside by application under this section if it is made beyond 6 months from the date of sale."

The further remedy prescribed for this in the Civil Procedure Code is a regular suit, limitation of which is one year from the date of sale. For such suit *ad valorem* court fee has to be paid. The tenant, therefore,

invariably avails himself of the cheap application procedure to set aside a sale instead of coming within 30 days to pay up his dues. I think that a time limit should be prescribed for applications which are often made and granted on the flimsiest of grounds.

RANGPORE JOTEDARS.

Clause 113 of the Bill.—In my opinion there is no ground for a drastic change like the one contemplated in clause 113. The incidents of tenures have hitherto been governed by the law of contract. Any legislation in supersession of this is, it seems to me, absolutely uncalled for. The grievances of a particular class of people in a particular locality should not be the subject of such drastic legislation, specially when similar circumstances are known to prevail in other localities as well. It is not reported that there has been any litigation on any noticeable scale between the jotedars of Rangpore and their landlord to justify any legislation of this description. This matter engaged the attention of the former legislators. They considered the existing law to which they are subject sufficient to deal with them, and did not think that any interference of the legislature was necessary.

Note of dissent by Kumar Shib Shekhareswar Ray.

I have signed the report, and, so far as the Bill goes, I accept the broad principles on which it has been drafted, though, as to details, there are several points on which I do not entirely agree with the draft. But I do not propose to enter into those details here, because it will be found in the main report that we have recommended for the circulation of the Bill, before its introduction in the Legislature, with a view to elucidate public opinion thereon. Every item in the Bill, therefore, will undergo a critical examination by those who are affected by it. Their considered opinion together with the proceedings of the committee will, I hope, be a sufficient guide to the Government in finally shaping the Bill. I have however added short notes on those clauses of the Bill which appeared to me to deserve any particular notice.

2. We have introduced several important innovations into the tenancy law of Bengal, and almost every one of them has been to the benefit of the tenants, namely,—

(1) extension of the status of a tenant to a *bona fide* cultivator [Clause 5 (*a*)],

(2) vesting an occupancy raiyat with the right of cutting down trees and utilising them (Clause 21),

(3) declaration of occupancy holdings as transferable at the option of the tenant (Clause 22),

(4) extension of the right of occupancy to an under-raiyati holding (Clause 28),

(5) granting facilities to tenants to make payment of rent and prove its tender (Clauses 33, 36 and 39),

(6) vesting the occupancy tenant with the right of excavating tanks (Clause 48),

(7) granting facilities to tenants to apply for the appointment of common managers (Clause 60),

(8) repeal of the chapter on distraint (Clause 88), and

(9) granting permanent rights to Rangpore jotedars (Clause 113).

Besides the above, there are also several minor changes which would prove beneficial to the tenants. Of course every one of these innovations, more or less seriously, encroaches upon the vested rights and interests of the landlords. But, though a representative of the landlords on the committee, I am glad to observe that I found myself in a position to support the main principles on which they are based. This has been possible because I never made a fetish of the vested rights and interests of the landlords nor of their prestige and privileges. I never allowed them to come in the way of my support to any measure which I thought would ultimately tend to a better understanding between a landlord and a tenant, and place their relationship on a sounder and friendlier basis. In every case, however, I pressed for a compensation commensurate with the sacrifice which the landlords were called upon to make I am happy to say that the committee as a body were sympathetic and eager to do justice, and I cannot but speak gratefully of our President, whose patience must have been taxed to its utmost by expostulations of the representatives of the different interests on the committee, but who was never tired of giving a hearing to every one of us. It was largely due to his honesty of purpose and soundness of judgment that the conflicting views were often reconciled and conclusions reached which, if they did not always satisfy every one of us, at least convinced most of us of their utility and fairness.

3. But when I come to examine what we have done for the landlords I am constrained to say that the committee have done very little to improve their lot. I was sorry to observe that the majority of the committee were all along dominated by the impression that the landlords as a class are a powerful body and, irrespective of any legislation, they would always have their way and the tenants would meekly submit to them, and as such they required very little protection. This might be true of a few big landlords; but, even if true, it is hardly desirable that they should be encouraged to

force their will by questionable means. On the other hand, the bulk of the landlord community consists of petty landlords with rent-rolls hardly exceeding four figures. In their case, any question of threat or coercion or recourse to unfair means is an impossibility. It is therefore highly desirable that their just grievances should be attended to and necessary protection provided for. There are at least a few points on which the landlords feel very strongly, but it is most unfortunate that I could not convince the committee of their seriousness, and I am very sorry that I have to submit a special note on them.

4. The main grievance of the landlords of Bengal is that its land laws do not afford them sufficient protection against non-payment of rents by the tenants. Instances of such non-payment, on the other hand, are steadily on the increase, chiefly owing to the passing of lands into the hands of non-resident tenants. Realisation of rents by suits, in such cases, is however a ruinously costly and cumbrously dilatory procedure. What the landlords, therefore, wanted was a summary procedure in the matter of realisation of rents. But any proposal for such summary procedure is beset with so many practical difficulties that the committee could not come to a definite conclusion on the point and have practically left the thing as it stands at present. It is true that some minor changes have been made in the procedure but they are almost useless for all practical purposes. All that the committee have been able to accomplish in this connection is that certain facilities have been afforded in the case of co-sharer landlords and tenants. But this does not at all touch the real issue *viz.*, protection against non-payment of rents. I admit that no direct satisfactory solution of the difficulty could be presented before the committee but I beg to submit that there is at least an indirect way of meeting this difficulty, which would prove an effective deterrent against withholding the payment of rent, and that is to make the tenant liable to ejectment for continuous non-payment of rent for an unreasonably long period. It is an admitted principle of the land laws of Bengal that a tenant must continue to pay rent to entitle him to hold or occupy the land, and the Tenancy Act before its amendment in 1885 made a tenant liable to ejectment in the case of his failure to pay rent (sections 21 and 22, Act X of 1859 and sections 22 and 23, Act VIII B. C. of 1869). In recommending the repeal of these sections, the Rent Committee of 1880 said that "as an occupancy holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a raiyat ought no longer to be ejected from such a holding for non-payment of rent" (paragraph 34). But it is evident that the mere saleableness of a tenancy in execution of a rent decree has not been quite effective in securing a prompt realisation of the arrears. An eminent jurist has rightly observed that the real trouble of a landlord begins after a decree has been obtained. The procedure bristles with obstacles by which the realisation of the decretal amount can be indefinitely put off. It is therefore extremely necessary to provide for a coercive measure on the lines of the repealed sections of the old Act, which would operate as a preventive against the practice of withholding the payment of rents for an unduly long period. Undoubtedly there might be quite reasonable grounds for being unable to pay rent regularly, and a tenant might be incapable of making any payment even for a year or two for reasons over which he has no control, such as a flood, a drought or domestic troubles. But if a tenant persistently withholds payment for an unduly long period, in spite of the facilities which have been provided in the proposed legislation and which, by the way, no longer leave any room for a complaint on the ground of the landlord's refusal to accept payment, then I think it can be said without any fear of contradiction that it is rather the tenant who wants to harass the landlord by non-payment, knowing it only too well that a rent suit will, in nine cases out of ten, prove ruinous to the landlord. We should here also bear in mind that the committee have done away with the provisions contained in the chapter on distraint, which, though seldom resorted to by the landlords, had a great moral effect on the tenants in the matter of regular payment of rents. In view of these circumstances I strongly recommend the restoration of the repealed sections of the former Act which provided for ejectment for non-payment of rent, with necessary modifications so as not to operate harshly on the tenants, who, from temporary causes, are unable to make regular payments. I have accordingly made necessary changes in sections 10, 18 (*b*), 25 (*c*), 65 and 66 (1) of the present Act. The proposed amendments would be found in my notes on clauses 10A (new), 14, 21A (new), 40 and 41 of the draft Bill.

The effect of these amendments would be to enable the landlord to institute a suit to eject the tenant if he has failed to pay rent for a continuous period of three years, and a decree for ejectment shall not be executed if the arrears are paid within thirty days from the date of the decree. I should also mention here that under the present Act, an under-raiyat is liable to ejectment for non-payment of arrears even for a single *kist* and it would be hardly fair to deprive, altogether, the landlord of an under-raiyat of this right by merely extending the right of occupancy to the under-raiyat. In conclusion I should also point out that this provision for ejectment for non-payment of rent is quite harmless, inasmuch as it is only meant to act as a check against persistent non-payment, and would not be put into operation unless the tenant has failed to pay rent for a continuous period of three years.

5. Another serious grievance of the landlords is the latitude allowed to a tenant, in a suit for arrears of rent, for taking any number of pleas, most of which have no direct bearing on the issues in such a suit. They are mostly frivolous and taken only with a view to cause delay and unnecessary trouble to the landlord, such as a plea of dispossession or diluvion. These are pleas which give rise to issues which could be decided in a suit other than a rent suit between a landlord and a tenant. This can be remedied by making a provision to the effect that the court shall not ordinarily take cognizance of any plea which would give rise to an issue which could be decided in a suit other than a rent suit.

Then again it is a matter of common knowledge that in a rent suit the defendant invariably takes the plea of payment, which, in almost every case, ultimately turns out to be false. But as a result of this plea the defendant can harass the landlord by putting off the payment of his dues till the decree is executed. It is, therefore, necessary to put a stop to this fraudulent practice. The landlord is liable to a heavy penalty, to be imposed summarily, if he refuses to grant rent receipts or statements of accounts to the tenant; and the tenant on the other hand has been given ample protection against a landlord who refuses to accept payment of rent. In the circumstances there is no reason to suppose that a tenant would, in any case and much less in the case of a dishonest landlord, make any payment without rent receipts, and so he should not be ordinarily allowed to take the plea of payment, without filing rent receipts in support of this plea. If he wants to press this plea he should at least be asked to deposit the amount or any reasonable portion thereof as the court directs after hearing his story.

I have accordingly made definite proposals in my notes on clause 93-A of the draft Bill which give effect to my suggestions.

6. Another important matter with which the landlords are vitally concerned refers to the amount of annual rent to which they are lawfully entitled. In the definition of the term "rent" as adopted in 1885 (*see* section 3), the introduction of the word "lawfully" has led to its interpretation in the widest sense possible, as a consequence of which so long as a definite issue regarding the amount of rent is not decided by a competent court there always sticks to it an element of uncertainty. That this state of uncertainty has not so far caused any widespread and serious practical difficulty is only due to the good and harmonious relationship that generally exists between the landlords and tenants in Bengal. None the less this has been a fruitful source of trouble and friction between them. Specially as a result of the manner in which the proceedings under sections 102 and 103-A are being carried on at present in the districts, it often happens that the whole tenantry is set aflame, and rents which had been regularly paid for periods exceeding 15 or 20 years are disputed on the ground that at some time or other the rents were settled illegally. The summary manner in which these disputes are decided by the Settlement authorities makes it almost impossible for the landlords to show why the rents were altered so long back as 15 or 20 years. The result is simply ruinous to them. It is therefore of utmost importance that some sort of finality should be given to the amount of annual rent which has been realised for a sufficiently long period proving thereby that no undue influence was exercised to settle the rent. For, had there been any use of undue influence or threat or coercion, the tenant surely would have moved in the matter during the long interval, and in such cases the law, too, deals very severely

with the landlord. I accordingly suggest that a rent which has been paid continuously for a period of three years immediately preceding the period for which the rent is claimed, should be deemed to be the rent lawfully payable for the time being. The proviso to section 51 proposed by me gives effect to my suggestion and will be found in my note on clause 31A (new) of the draft Bill. If anybody wants to alter the rent after having paid it regularly for a period of three years, he should proceed in the manner provided for in the Act for this purpose.

7. In the preceding paragraphs I have made an attempt to place before the public as well as the Government some of the principal grievances of the landlords and indicate the manner in which they should be redressed. I have done so in the hope that in the light of public opinions received, it might be possible for the Government to consider my suggestions in a sympathetic manner and make necessary provisions in the Bill before it is introduced in the Bengal Legislative Council.

Notes on particular clauses.

Clause 5.—In clause 5(*d*) of the draft Bill, the following changes should be made namely,

(1) "After the words and figures 'in clause (*9*), the following shall be inserted :—

After the word "land" the words "or a portion or share thereof and", and

(2) At the end of the clause the following words shall be added :—

"and the word 'separate' shall be omitted".

Addition of the words "or a portion or share thereof" is necessary to facilitate the collection of rent in cases where the rent of a parent holding is separately collected from co-sharer tenants and their shares form the subject of separate tenancies without any division of the lands of the parent holding. There are also instances where the same holding is held under the proprietors of different estates and forms the subject of separate tenancies. Proviso to the new section 26E also introduces the question of a portion or share of a plot of land in the same tenancy. In none of these cases can a rent decree be obtained unless the definition of a holding is changed as suggested. Further notes on the subject are to be found in my notes on clause 90 of the draft Bill.

Clause 10A.—A new clause to the following effect should be added after Clause 10 of the draft Bill :—

"10A. In Section 10 of the said Act, after the word 'ground', the words 'that he has not paid rent for a continuous period of three years or' shall be inserted."

Reasons for the change are stated in my note of dissent on general principles (para. 4).

Clause 14.—In clause 14(*1*) of the draft Bill, after sub-clause (*i*) the following new sub-clause should be added :—

"(*i*) (*a*) after the word 'ground' in clause (*b*) the words 'that he has not paid rent for a continuous period of three years or' shall be inserted."

Reasons for the change are stated in my note of dissent on general principles (para. 4).

Clause 21A.—A new clause to the following effect should be added after clause 21 of the draft Bill :—

"21A. In section 25 of the said Act, the word 'or' at the end of clause (*a*), shall be transferred to the end of clause (*b*), and after clause (*b*) the following shall be added :—

'(*c*) that he has failed to pay rent for a continuous period of three years.'"

Reasons for the change are stated in my note of dissent on general principles (para. 4).

Clause 22.—The proviso to section 26D of the draft Bill should be replaced by the following:—

"provided that in the case of a transfer, other than a sale in execution of a decree, of a holding or portion or share thereof, the landlord may, within two months of the receipt of the notice of transfer, apply to the lowest Civil Court having jurisdiction to entertain a suit for rent of the holding, to fix the market value of the holding or of the transferred portion or share, or to decide the exact amount of the consideration money, and the transferee shall be liable to pay to the landlord a fee calculated at the rate of 25 per cent. of such market value, or consideration money, as the case may be, to the extent the amount of such fee is in excess of any fee which he has already paid, and an order of the court directing the payment of such additional fee shall have the force of a decree for arrears of rent."

The committee have provided for calculation of the fee on the market value in all cases of transfer except in the case of a voluntary sale of an *entire* holding. To me there seems to be no justification for this exception. It is obvious that the right to repurchase would be exercised only in the case of an undesirable transferee; ordinarily the zamindar would be satisfied with a fee calculated on the basis of a proper valuation of the holding; it is, therefore, necessary to provide for the calculation of the fee on the market value in all cases of transfer. I should mention here that even the occasion for such calculation of the fee by the court would be rare and arise only in cases of gross undervaluation. The effect, therefore, of this provision would be rather to check undervaluation.

Clause 31A.—A new clause to the following effect should be added after clause 31 of the draft Bill:—

"31A.—At the end of section 51 of the said Act the following shall be added, namely,

'provided that notwithstanding anything contained in this Act, any rent which has been paid for a continuous period of three agricultural years immediately preceding the period for which the rent is claimed, shall be deemed to be the rent lawfully payable for the time being.'"

Reasons for the change are stated in my note of dissent on general principles (para. 5).

Clause 40.—The proposed clause 40 of the draft Bill should be replaced by the following:—

"40. For section 65 of the said Act the following shall be substituted:—

'65. The tenure or holding, as the case may be, of a tenant shall be liable to sale in execution of a decree for arrears of rent and the rent shall be a first charge thereon.'"

Reasons for the change are stated in my note of dissent on general principles (para. 4.)

Clause 41.—In clause 41 of the draft Bill, for sub-clause (*a*) the following shall be substituted, namely:—

"(*a*) in sub-section (*1*) for the words 'permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the Jeyt where the Fasli or Amli year prevails', the following shall be substituted, namely, 'non-occupancy raiyat or under-raiyat, for a continuous period of three years, or from a non-occupancy raiyat or under-raiyat for any quarter, at the end of the agricultural year.'"

Reasons for the change are stated in my note of dissent on general principles (para. 4) and also in the note on this clause in the draft Bill.

Clause 90.—In clause 90 of the draft Bill, the proposed sub-section (*3*) of section 146B should be amended as follows :—

"(1) In sub-section (*3*) of section 146B, the words 'shall have the effect of a decree in a suit for money and of a sale in execution of a decree in such a suit, and' shall be omitted, and before the word 'holding' where it occurs for the third time, the word 'entire' shall be inserted, and

"(2) In the proviso to the said sub-section, the words 'unless the decree has been found under this sub-section to have the effect of a decree in a suit for money', shall be omitted.'"

There is no reason whatever as to why the decree for arrears of rent against a co-sharer tenant shall not have the force of a decree for rent. Rent is the first charge on a holding (section 65), and as such the holding is deemed to be mortgaged for the dues on account of the rent, and the landlord as the mortgagee has every right to realise his dues by selling the mortgaged property to the extent of the interest of the judgment-debtor. Suppose a co-sharer tenant has mortgaged his share in the holding to a *Mahajan*, in that case would he not be entitled to realise his dues by selling the share? Surely he would. Then why should the landlord-creditor be deprived of this right? In the case of the *mahajan's* dues, the auction purchaser of the mortgaged share becomes a co-tenant in the tenancy; similarly in the case of the landlord's dues, the auction-purchaser of a share which is virtually mortgaged for the rent, could surely become a co-tenant and enjoy all the advantages of the auction purchaser at a sale in execution of a rent decree. There appears to be absolutely no bar to this proposal except perhaps the fact that a holding has been interpreted to mean an *entire* parcel or parcels of land in the holding (section 3). But this evidently is a defect in the definition of the term "holding" and should be remedied. A tenure includes an undivided share in the tenure, and so, why should not a holding include an undivided share in the holding? There is very little difference between a tenure and a holding in the manner in which their respective lands are held by their owners. The owner of a tenure might have some plots under direct cultivation and some let out to under-tenants, similarly the owner of a holding might have some plots let out to under-tenants and some under direct cultivation. If there has been no difficulty in respect of an undivided share in a tenure, why should there be any difficulty in respect of an undivided share in a holding? Perhaps those who are responsible for the difinition of the term "holding" were carried away by the idea that a holding only consisted of lands entirely under the direct cultivation of its owner. But this not so; whatever might have been the state of affairs in 1885, at the present day the conditions are entirely changed and this is proved by the necessity of declaring all under-raiyats as occupancy raiyats. I have therefore proposed an amendment of the definition of the term "holding" in its proper place [clause 5 (*d*)] and so there can be even no technical objection to the proposed changes in this sub-section.

Clause 93.—In clause 93 of the draft Bill, after sub-cluse (*h*), a new sub-clause to the following effect should be inserted :—

(*hh*) after clause (*e*) the following shall be inserted, namely—

'(*ee*) except for reasons to be stated in writing, the Court shall refuse to take cognizance of any plea which may give rise to an issue which can be decided in a suit other than a suit for arrears of rent, between a landlord and a tenant;"

Reasons for this change are stated in my note of dissent on general principles (para. 5).

Clause 94A.— A new clause to the following effect should be added after clause 94 of the draft Bill :—

"94A. After section 152 of the said Act the following shall be inserted :—

'152A. The court shall refuse to take congnizance of any plea of payment unless it is accompanied by rent receipts or a statement of account showing that the payment has been made:

"provided that it may take cognizance of the defendant's plea on his depositing in the court the amount which he claims to have paid or such reasonable portion of it as the court directs."

Reasons for this change are stated in my note of dissent on general principles (para. 5).

Supplementary Note.

With reference to the note of dissent of Maharaja Khsaunish Chandra Ray Bahadur on the clauses (Part II) I am in agreement with his views on the following clauses:—

1. Bill clause 5 (*a*), section 3.
2. Bill clause 14 (*2*), section 18.
3. Bill clause 25, section 40 (*1*).
4. Bill clause 28, section 48.
5. Bill clause 48, section 76 (*2*) (*a*).
6. Bill clause 71, section 105 (*c*).
7. Bill clause 93, section 148.

With reference to Babu Brajendra Kishore Ray Chaudhury's Note of dissent on the clauses I agree with his amendments to clauses 93 [section 148 (*e*) (*1*)] and 107 A (section 174).

Note of dissent by Maharaja Kshaunish Chandra Ray Bahadur.

Part I.

I regret I cannot but oppose the principle of the Bill when I find that the last stroke which will settle the impoverished, yet much abused, landlords of Bengal is going to be dealt and especially when petty landlords including mostly poor *bhadraloks*, women and children, are going to be deprived of their means of subsistence. The Permanent Settlement is looked upon as having conferred the greatest boon on the zamindars and little or nothing on the tenants. A cursory glance at the statistics will show that of the unearned increment in land by far the lion's share has gone over to the tenants, and a very small fraction to the present zamindars, who are mostly such as have not derived their title by birth alone but have themselves or through their ancestors paid for what they enjoy now. It would be interesting in this connection to compare the unearned increment accruing to tenants in temporarily-settled estates or Government estates.

Occupancy right was never and is not even now transferable but it is now sought to be made so, and an offer of 25 per cent. of the consideration money or its like has been offered as a bait to the zamindars. But "bequest to a natural heir," "partition" and "lease" have been excluded from the category of transfer, thus deliberately nullifying what the legislation outwardly proposes to give to the zamindars. What occupancy right will after this be sold at all? The raiyats will grant leases keeping a nominal profit and taking the price by way of *salami*. Portions of holdings have already been transferred in numerous cases on the basis of the ruling that the zamindar cannot oust the transferees now but as soon as this new provision will come into force the co-sharer tenants will partition the holdings amongst themselves and the zemindar will be bound to accept them not even in lump but separately !! I am not sure whether all these far-reaching effects of these provisions have been carefully considered. At the time of the permanent settlement it was the *khudkost* or resident raiyats who had a permanent interest in their holdings and the first Rent Act (Act X of 1859) of Bengal extended this much coveted right to several others who had absolutely no claim to it, and the present Act threw open this right to a far more extensive class of tenants, granted more privileges than could be dreamt of by the tenants. Indeed it was laid down that the "settled raiyat" would acquire a right of occupancy in all and every land that he held no matter whether a certain plot was temporarily settled with him for a year even by a registered lease. One should pause and consider with an even mind the infringement on the rights and privileges of the zamindars since the time of the Permanent Settlement Now it is sought to make the occupancy right transferable and the zamindar has been offered some compensation. There should not be any objection to the curtailment of one's rights if some compensation be forthcoming. In addition to the above three provisos inserted with a view to rob the zamindars of this compensation—inadequate though it be—the last and not the least is the provision which purports to give occupancy right to the under-raiyats. This makes the actual zamindar get his *salami* once and for all. The Rent Acts that have been passed were passed on the ground that at the time of the Permanent Settlement tenants were left at the sweet will and pleasure of the landlords and it was necessary that their interests should be protected. Let us then stick to this principle and go no further, Was there an under-raiyat at that time? Or is he not a creation of the present circumstances? If he had no existence at the time of the Permanent Settlement, why should the present state of affairs which has been in existence for 37 years and on which the economic conditions of the people have been arranged, be given such a rude shock, and persons with no right be given a boon which they could never think of, while others who know and believe themselves to be practically in *khas* possession of their lands be suddenly robbed of their land?

I would now examine the position of a rent receiver. He really cannot live. With all these curtailments the zamindar cannot live. Rents are enhancible only by bits and not within 15 years—a period during which the price of necessities of life sometimes goes up a hundred per cent. The provision of the law laying down increase of rent for increase in the price of food grains is plausible enough on paper. But facts give the lie to this. Paddy

sells now at a price which is over three times that at which it sold 30 years ago. What zamindar has ever got more than 6 annas in the rupee even if *he could prove* that he had not increased the rent for 30 years? Even with this state of the administration of the law it is now proposed to extend the right of commutation to raiyats at fixed rents in kind even, not to speak of *bhagchasis !!* As I find, however, that the determination to curb further the privileges of the zamindar is quite strong and it is useless to fight for their wholesale retention, I beg to append below my note of dissent in a modified form.

Bill clause 5 (*a*) [*Sec. 3.*]—The word "occupant" should be clearly defined to mean occupant of *agricultural* holdings.

Bill clause 14 (*2*) [*Sec. 18.*]—I object to commutation in respect of *mukrari* rents in kind, *e.g.*, where a raiyat holds under a lease according to which he has got to pay a fixed quantity of paddy every year. The principle enumerated in para. 11 of the main report, viz., that produce-rents "encourage indifferent cultivation and are against the best interests of agriculture" does not apply in such cases. Moreover, there is no object in commutation in such cases as the money rent gets automatically adjusted every year according to the rise or fall in the price of the staple food crop.

Clause 22. [*Sec. 26 D, 26 K.*]—I accept the principle that occupancy holdings should be made transferable subject to the condition of *salami* as prescribed in the Bill; but I object to the exclusion of bequests in favour of a natural heir (s. 26 D). I fail to see how such cases can be differentiated from a case of ordinary transfer, *e.g.*, by one co-sharer to another, or to a third person. I may point out that no such distinction is made in the matter of court fees in probate cases.

For the same reason I object to the exclusion of (*i*) partition and (*ii*) leases. "Partition" means the splitting up of the area and rent of the holding, and any such division requires the previous sanction in writing of the landlord (*vide* sec. 88). As regards "leases", if these are excluded, a raiyat intending to avoid the landlord's fee may easily give a sub-lease with a nominal rent, and the whole object of the law will be frustrated. As an under-raiyat, under the proposed law, will also acquire occupancy rights as a matter of course, it is but fair that such leases are treated as transfers for the purpose of landlord's fees. Incidentally this will serve to stop unnecessary subinfeudation. Transfers by a raiyat to a co-sharer landlord, where the transferee becomes a tenure holder, under the proposed section 22, seem not to have been considered in connection with the question of *salami*. The co-sharer landlord who purchases the raiyati holding should in all fairness pay the proportionate *salami* to his other co-sharers before he is allowed to have exclusive possession of the 16 annas share of the tenancy. In subsequent transfers, the tenancy should, for the purpose of landlord's fee be treated similarly as a raiyati holding, and necessary amendments should be made in the proposed section 22 as well as section 26 K. If this proposal about subsequent transfer is not accepted, I would move for a clearer enunciation of what "beneficial rent" means in section 7 (1) of the Act on similar lines as done in clause 3 (*3*) (*b*) of this Bill, *i.e.*, whether a low rent was assessed on the under-tenant in consideration of any premium realised or like reason.

Clause 25 [*Section 40 (1).*]—*Vide* my note above on clause 14 (*2*). This section should not apply to raiyati holdings at fixed rates or under-raiyati holdings at fixed rates.

Clause 25 [*Sec. 40(10)*].—The provision of spreading the premium over a term of many years should be omitted. If at all kept it should not be for more than 3 years.

Clause 28 [*Sec. 48*].—It is not understood why an under-raiyat should be considered as possessing occupancy rights even when he is neither a settled raiyat of the village nor has held the same land for 12 years. This proposed privilege is even greater than what has been conceded to a raiyat. There should, therefore, be a *first* proviso of section 48 that an under-raiyat before he can acquire occupancy right should either be a settled raiyat of the village or have held the same land for twelve continuous years.

Three years' time after passing of the Bill should be given to the existing raiyats to oust their under-raiyats and in case of existing valid leases, the raiyats should be granted such time up to one year after the expiry of the lease.

Clause 31 [*Sec. 50(2)*].—I object to the repeal of section 50(2). The repeal will make indefinite a matter which is now definite, and leave both landlord and tenant to the mercy of the courts.

Clause 48 [*Sec. 76(2)(a)*].—The addition regarding "providing drinking water for the tenant and his family" may be clearly explained to mean *wells* and not small *dobas*, which the tenant would like to excavate near his house. The sanitary condition of a village with so many insanitary *dobas* in it may be better imagined than described. The Public Health Department should be consulted in this matter.

Clause 71 [*Sec. 105C*].—In all cases, as the landlord is entitled to enhanced rent or at least to apply for it, his costs in claiming it should always be paid by the defendants.

Clause 90 [*Sec. 146B(2)*].—It should be made clear that this will not debar the landlord from realising *salami* from unrecognised transferees [*cf.* proposed section 54(2), proviso].

Clause 93 [*Sec. 148*].—Costs on the contested scale should be provided for cases in which a raiyat after harassing the landlord with adjournments eventually does not file any written statement at all or does not appear on the final day of disposal.

Clause 111 [*Sec. 182*].—I object to the proposed amendment. A man for example, having a house in a town governed by the Transfer of Property Act, takes a few cottas of agricultural land as a raiyat. The effect of the proposed law will be that the landlord will be debarred from treating his homestead land any longer under the Transfer of Property Act. This is one of many possible examples of hardships to the landlord. I prefer section 182 as it is now in the Act.

Clause 113 [*Sec. 183A(2) of Chapter XV-A*].—This sub-section should be omitted. Any new cases like this should be placed before the Legislature and carefully considered when occasion arises. Goverment should not be given such *carte blanche*.

Clause 117 [*Sec. 195(e)*].—*Khodkust* raiyats should not include all raiyats having occupancy right, because occupancy raiyats may cultivate land in one village although they may not be residents of that village The law should not be changed.

SUPPLEMENTARY NOTE.

I agree with the note of dissent of Kumar Shib Shekhareswar Ray on the following clauses of the draft bill, viz., (1) Cl. 10A, (2) Cl. 14, (3) Cl. 21A, (4) Cl. 122, (5) Cl. 31A, (6) Cl. 40, (7) Cl. 41, (8) Cl. 90, (9) Cl. 93, (10) Cl. 94A.

I agree with the note of dissent of Raja Ban Bihari Kapur Bahadur on the following clauses: viz.—(1) Cl. 5 (*b*) (*d*) (*e*) (*f*), (2) Cl. 6, (3) Cl. 22—Sec. 26G only, (4) Cl. 25, (5) Cl. 28, (6) Cls. 34, 35, (7) Cl. 48, (8) Cl. 54, (9) Cl. 57, (10) Cl. 95, (11) Cl. 102, (12) Cl. 109, (13) Cl. 113—only the last portion, *i.e.*, the power of extension in section 183 A(2), (14) Cl. 117.

I agree with the note of dissent of Babu Brojendra Kissore Roy Chaudhury on the following clauses:—93 and 94.

Note of dissent by Babu Surendra Chandra Sen.

I have signed the report of the Committee subject to dissent on certain points which are stated below :—

Clause 5(a).—Definition of tenant: I think the contrary presumption should be provided for, for the benefit of the landlord, viz., "*if the landlord provides the plough, cattle or any part of the implements of agriculture that person shall be deemed to be a labourer.*" This would make the law easier of application.

Clause 5(d). Definition of holding: In the definition of "holding", after the word "raiyat" the words "or under-raiyat" have been proposed to be added in the preliminary draft Bill in view of the general principle adopted by the committee regarding the occupancy right of under-raiyat. I am however of opinion that an under-raiyat ought not to be given a right of occupancy and therefore the words "or under-raiyat" ought not to be added. See my remarks under clause 6.

The definition of "holding" should be altered, and it should be as follows:

"*Holding means the interest of a raiyat in the land which he holds and which forms the subject of a separate tenancy.*"

The practical difficulty which is now felt and the reasons for my suggestion stated above will appear from the foot-note below.*

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*Occupancy right in undivided share of land.

S. 3 cl (9) According to the definition of the term "holding" as interpreted by the case law, an undivided share of a parcel of land is not a holding.

Illustration

A and B are joint proprietors of an estate. A lets out his one half share *as a tenure* of a parcel of land by one lease, B lets out his one half share of that parcel separately by another lease, there become two *distinct tenures*, A or B may sue alone for ejectment or enhancement and the decree obtained for rent is a rent-decree. *But if A lets out his one half share of land as a raiyati tenancy and there are stipulations that A alone will be entitled to sue for rent or enhancement or ejectment, and B lets out by a separate lease his undivided share with all rights of enhancement, ejectment, etc.*, still according to the case law A or B cannot alone sue for enhancement or ejectment, it has been held that the tenancy under A or B is not a holding. The case law is to the effect that a *parcel* or *parcels* of land means "an *entire parcel*" or "*entire parcels*" of land."

The practical difficulty is that the landlord cannot, although there is a separate lease, bring a suit for enhancement of rent under s. 30, for it is the landlord of a "holding" who can bring such a suit, it is not possible to bring a suit jointly with his co-sharer landlord, for the leases are separate, the rent is separate and the stipulations are different. Likewise the decree for rent is not a *rent decree* but a money decree.

1 C. W. N. 521 S. C., 25 Cal. 917, 2 C. W. N. 44; 2 C. W. N. 680, 16 C. W. N. 877, S. C., 16 C. L. J. 9, sec contra, 8 C. W. N. 781; 3 C. L. R. 140, observations of Richardson, J. 18 C. W. N. cclxiv (264 notes portion).

It is suggested therefore that the definition of "holding" should be altered and in this respect the definition of "tenure" should be looked into, and the definition may be altered thus:

"*Holding*" *means the interest of a raiyat in the land which he holds and which forms the subject of a separate tenancy.*"

Cf. definition of "holding" in the "Landlord and Tenant Bill" in the Report of the Rent Law Commission, [illegible]

The word used in s. 30 is "holding" and the word in s. 105 is "land"; it has therefore been held that although the landlord of an undivided share of a parcel of land which has been let [illegible] separate lease cannot bring a suit for enhancement under s. 30, but he can make an application for settlement of rent under s. 105 as the word used in s. 105 is "land" and not "holding."

21 C. L. J. 352.

Clause 5(g)—Definition of agricultural year. The alteration proposed is not necessary inasmuch as the Bengali year is not prevalent throughout the whole of Bengal.

Clause 6 [s. 4].—Classes of tenants. The important alterations which have been proposed in the draft Bill are as follows: (1) Raiyats at fixed rent or rate of rent may acquire right of occupancy. (2) Under-raiyats may also acquire such a right.

According to section 4 as it now stands a raiyat at fixed rent or rate of rent cannot acquire a right of occupancy inasmuch as the classification of tenant shows that *one class excludes another*. It is desirable that the rights and privileges of a raiyat at fixed rent should be governed by contract subject to the provisions of the Act.

An under-raiyat ought not to be given the right of occupancy. At present an under-raiyati lease may extend only to nine years, and an under-raiyati tenancy is not heritable except for the remainder of the term of the lease; and when an under-raiyati tenancy determines by efflux of time or otherwise, it reverts to the raiyat. This wholesome rule discourages sub-leases by a raiyat and he gets his land back; consequently he is not converted into the position of a tenure-holder. This subject is dealt with at length in clause 54.

In this connection I may usefully quote in the foot-note below* a passage to be found at page 3 of my printed notes *in re* amendment of the Bengal Tenancy Act which I prepared for the Bengal Tenancy Act Amendment Committee.

***Classification of Tenants and Right of Occupancy in an under-raiyat.**

S. 4. According to the classification of tenants it is only a raiyat who may acquire a right of occupancy, an under-raiyat is a person who holds immediately or mediately under raiyats (occupancy or at fixed rent). From this it is clear that an under-raiyat *with a right of occupancy* has not been recognised in this section, if however an under-raiyat's right of occupancy is now thought fit to be recognised it is necessary that the classification should include a class of under-raiyat with a right of occupancy.

Then a further question arises as to whether an under-raiyat holding under another under-raiyat should also be given a right of occupancy.

Mr. Finucane says :—

"There can be no manner of doubt that under the local custom as recognised in Jessore *korfa* raiyats or sub-tenants are supposed to have occupancy rights. Therefore there are two occupancy rights in the same land . .. ."

Extract from a letter of M. Finucane, Esq., on special duty to the Secretary to the Board of Revenue, dated 1st March 1883.

But the Legislature in enacting s. 4 treated the superior occupancy raiyat as a tenure-holder, and the *korfa* occupancy raiyat retained his position as such.

So, it is not desirable to give under-raiyats an occupancy right.

From s. 113 and s. 183, illustration (2) it appears that this Act recognises right of occupancy in an under-raiyat but the Act is silent as to the provisions which will apply to an under-raiyat (having a right of occupancy) in regard to enhancement, ejectment, transfer or succession and also as regards other S. 183 provides that nothing in the Bengal Tenancy Act shall affect any custom, usage or right *not inconsistent with* or not expressly or by necessary implication modified or abolished by provisions. Now, according to the classification of tenants in s. 4, one class excludes the other, and therefore occupancy raiyats *who are a distinct class* of tenants exclude the under-raiyats *who are another class of tenants*; so it seems that s. 183 excludes the idea of *an under-raiyat with right of occupancy*; it is no doubt true that illustration (2) of s. 183 recognises right of occupancy in an under-raiyat, and that illustration assumes (*but it is submitted, wrongly assumes*) that a right of occupancy may be acquired by custom or usage, and that such a right is not inconsistent with the provisions of the Act. So the illustration is against the provision of s. 183, and against the spirit of the other provisions of the Act. It is true that s. 113 speaks of an under-raiyat with a right of occupancy, but that part of the section was an addition made by the Bengal Council long after the passing of the Bengal Tenancy Act, which is an Act of the India Council. The Bengal Council might have introduced the matter on account of the erroneous illustration to s. 183 [s. 113 occurs in Chapter X of the Act, and in regard to the drafting of this Chapter X which was enacted by Bengal Act III of 1898] Jenkins, C. J. observes in the case of *Umedulla* v. *Ramchandra*, 14 C. W. N. 812, "of the careless drafting which mars this very important Act."

Under-raiyat's right of occupancy.

No rule has been laid down anywhere as to what elements are necessary for an under-raiyat to acquire a right of occupancy by custom or usage.

Moreover, a right of occupancy is a creature of the statute and can only be acquired under ss. 20 and 21 of the Bengal Tenancy Act and the corresponding sections of Act X of 1859 (s. 6) and Act VIII B. C. of 1869.

It is therefore suggested that an under-raiyat should not be given the right of occupancy.

Clause 7.—Definitions of raiyat and under-raiyat: The proposed additions and alterations are not necessary.

Clause 8.—Section 7, sub-section (3): In the proposed clause (*d*) I propose that for the words and figures "10 per cent.," the words and figures "50 per cent." should be substituted. According to the present law a landlord is entitled to get up to 90 *per cent.* of the profits, which is most inequitable; even an officer employed to collect rent who is paid by Commissioner gets more.

Clause 21.—Trees: In the proposed explanation "valuable trees" should also include *babul* trees (বাবলা) as they are useful for making carts.

Clause 22.—Transferability of occupancy holdings: I differ from the principle stated in the main report and I am of opinion that occupancy holdings ought not to be made transferable. I propose to discuss the question under the following heads:

I.—Law relating to transferability of occupancy raiyati holdings—

(1) Before the Permanent Settlement.

(2) After the Permanent Settlement and before the passing of Act X of 1859.

(3) After Act X of 1859 up to the passing of the Bengal Tenancy Act, 1885.

(4) After the passing of the Bengal Tenancy Act, 1885, up till the present time.

II.—Whether the grant of transferability would in any way infringe, the rights and privileges given to landholders under the Permanent Settlement.

III.—Whether occupancy holdings ought to be made transferable.

IV.—Present case-law and conflict, and whether there should be any legislation.

I.—*Law relating to transferability.*

(1) *Before the Permanent Settlement.*

The following is an extract from Mr. Shore's Minute of June 1789 respecting the Permanent Settlement of lands in Bengal :—

"389. It is, however, generally understood that the raiyats by long occupancy acquire a right of possession in the soil, and are not subject to be removed; but this right does not authorise them to sell or mortgage it, and it is so far distinct from a right of property."

In Mr. Justice Field's Digest at page 164 is found the following passages :—

"Before the period of British Govenment alienability was not an ordinary incident of immoveable property in India."

"Alienability was not an ordinary incident of immoveable property in land."

"Raiyati holdings were not transferable at the time of the Permanent Settlement."

Even *khudkast* raiyats could not sell or mortgage, although their holdings were hereditary. See *Sir John Shore's Minute, dated June 1889*

Sir Richard Garth says in his Minute, dated the 13th Settlember 1884: "It is admitted that occupancy holdings were not transferable at the time of the Permanent Settlement."

"The law and custom affecting ryots was not altered by the Permanent Settlement."—*Mr. Justice Campbell's Minute dated 12th October 1863.*

In the preamble to Regulation II of 1793 we find this:—

"The property in the soil was never before formally declared to be vested in the landholders nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government."

From this it is clear that Regulation II of 1793 recognised the fact that even landholders had no right to transfer their land by sale or mortgage before the Permanent Settlement.

Extract from Harrington's Analysis, pages 269, 281 and 301 :

"On the whole, therefore I do not think that these ryots can claim of alienating the lands......by sale or other mode of transfer, nor any right of holding them at a fixed rent, except in the particular instances of *khudkast* ryots, who from prescription, have a privilege of keeping possession as long as they pay the rent stipulated for by them."

There was no right of property nor right of transfer in occupancy holdings : *see* clause 7, section 15, Regulation VII of 1799.

There were two classes of raiyats :

(*a*) those who cultivated the lands of the village to which they belonged and who either, from length of occupancy or other cause, had a stronger right than others and were in some measure (according to Mr. Shore) considered as hereditary tenants and they generally paid the highest rent; they were called *khudkast* raiyats; whereas the other class cultivated lands belonging to a village where they did not reside, they were called *paikast* raiyats; according to Mr. Shore *they were tenants-at-will*.

Both these classes of *raiyats* had no right of transfer by either sale or mortgage of their holdings, as pointed out above.

(2) *After the Permanent Settlement and before the passing of Act X of 1859.*

"The law and custom affecting ryots was not altered by the Permanent Settlement." *Mr. Justice Campbell's Minute*, dated 12th October 1863.

"Act X of 1859 was intended for the most part as a consolidation of the existing law and custom...........*so the law relating to non-transferability remained the same as before.*" Mr. Justice Campbell's Minute, dated 1st June 1864.

3. *After the year 1859 up till the year 1885—the year in which the Bengal Tenancy Act was passed.*

It does not require any authority to be cited to show that the same law about transferability continued. Sir Richard Garth says in his minute, dated the 8th January 1880, in reference to Mr Justice Fields's minute as follows:—"He admits very fairly at the outset that before the period of British supremacy in India, tenures, as a rule, were not alienable; and also that *at and after the time of the Permanent Settlement it was always considered*, both by the legislature and the courts, that raiyats' tenures, whether they were permanent or temporary, were not transferable." It should however be mentioned here that the legislature recognised in the Bengal Tenancy Act that occupancy holdings are transferable by local usage (*see* section 183, illustration). It is submitted that there was never any such custom, nor has any local usage ever grown. Sir Richard Garth no doubt says in his memorable minute that "such tenures (*i.e.*, occupancy holdings) have never been yet transferable except by special custom." At the same time he says "such a custom is very rarely proved. I have known it repeatedly attempted in muffasil courts but very seldom proved."

I have looked into the law reports very carefully but I have not been able to find out a single case where it has been held that the custom or local usage of transferability of occupancy holdings has been proved to the satisfaction of the court. The High Court has laid down that in order to prove a custom or usage of transferability of occupancy holdings, what is necessary to prove is that such transfers have been made (1) to the knowledge (2) and without the consent of the landlord, (3) and that they have been recognised by him either without payment of a *nazar* or upon payment of a *nazar* also fixed by custom.

No such custom or usage has ever been proved, and if there had been an existence of such a custom or usage we would have found it proved in the law courts.

Before the present Bengal Tenancy Act was passed a statement was prepared from returns which were called from the munsifs' courts showing the number of purchases and classes of purchasers of raiyats' holdings which as a matter of fact are bought and sold in almost all districts of Bengal, and upon this argument an attempt was made to legislate that occupancy holdings ought to be made transferable; Mr. Justice O'Kinealy in his minute said in reference to these returns that "occupancy rights, so far from being rarely the subject of assignment, are freely transferable in every district of Bengal except Saran and Champaran."

But these returns are practically valueless to show whether a custom or usage of transferability existed for they only showed *instances of transfer*, but it does not appear whether there was any enquiry about the existence of the several elements necessary for proof of custom or usage.

Before the passing of the Bengal Tenancy Act the question as to whether occupancy holdings should be made transferable was thoroughly discussed; the majority of the members of the Rent Law Commission were of opinion that occupancy holdings ought to be made transferable by private sale or gift and devisable by will *but not transferable by mortgage*; there was a large mass of opinions taken* and there was a conflict of opinion but on a careful consideration of the subject *there was an excision of the transferability clauses from the final Bill* and when the Bill passed through the Indian Legislative Council the Hon'ble Mr. Amir Ali moved an amendment that "an occupancy raiyat shall be entitled in *Bengal proper* to transfer his holding in the same manner and to the same extent as other immoveable property" provided that the landlord shall be entitled to a fee of 10 per cent on the purchase money. The Hon'ble member after the discussion in the Council withdrew his amendment. His Excellency the President of the Council (Lord Ripon) in his speech said as follows:—

> "In the first place we have to consider the matter from the point of view of *right and equity*. Sir John Shore, a contemporary authority upon the subject, *has stated* in the most positive manner *that the occupancy right does not include the right of sale or transfer* and the Courts of Bengal as I understand have hitherto maintained this view. It is, therefore, a question as to how far we should be justified in giving the occupancy tenant a right carrying a money value *to which he has not hitherto been entitled by law*. That he should have it by custom is a totally different question."

I. *After the passing of the Bengal Tenancy Act, 1885, up till the present time.*

According to the present law occupancy holdings are not transferable, but the usage wherever it existed was declared by illustration (1) to section 183 be not inconsistent with and not necessarily modified or abolished by the Act. A large number of cases have since been decided by the High Court and it is very difficult to reconcile them; the principles enunciated and laid down are in conflict with each other, and the case-law is not in a satisfactory condition, and no one can reasonably question the propriety of legislation to lay down distinctly the law on the subject. In the Full Bench case of *Dayamoyi* versus *Ananda Mohan* 42 Calcutta 172 certain rules were laid down, and it was thought that the law was finally laid down with certainty, but in effect it will be found in the law reports that in a very large number of cases the rules laid down in the Full Bench were interpreted *so very differently from each other* that the Full Bench case is not of any practical assistance, and within a short time the Full Bench case was reconsidered by a Special Bench of seven Judges who partially modified the Full Bench case. The unsatisfactory condition of the present case-law will be further explained if the rules laid down in the several cases are examined: *Vide* below, heading No. IV.

* *Vide* the following amongst other papers [illegible]

1. Sir Richard Garth's Minute [illegible] September 1882 (Report of the Government of Bengal on the Bengal Tenancy Bill 1884, Vol [illegible]).
2. Minute by the Hon'ble [illegible] O'Kinealy (vide the same report, p 13
3. Memorandum dated [illegible] 1882, with reference to Sir Richard Garth's Minute dated the 8th September 1882 (vide the same [illegible], p. 23, at p. 24, paras 17 and 18)
4. Field's Digest [illegible] of occupancy holdings

II. *Whether the grant of transferability would in any way infringe the rights and privileges given to landholders under the Permanent Settlement.*

The raiyats had no proprietory rights in the land; proprietory rights include *right of transfer*, and this right was never possessed of by a raiyat. The Permanent Settlement undoubtedly *conferred proprietory rights on the landholders* with whom the settlement was concluded; Government conveyed the proprietory right in lands to the settlement holders by the Permanent Settlement (*see* s. s. 6 and 7 of Regulation I of 1793). The *property* in the soil was never before formally declared to be vested in the landholders but it was so done by the Permanent Settlement Regulation, (*see* the preamble to the Regulation II of 1793); the cultivators had no proprietory interest; the preamble speaks of proprietors *as distinct* from cultivators.

The *property in the soil* being vested in the landholders with whom the settlement was perpetually made, they are the only persons who can grant the right of transfer to other persons. If the zamindar is alone the actual proprietor how can his right be interfered with by legislation? One of the reservations which Government made on behalf of itself by the Permanent Settlement Regulation is as follows:

> "S. 8. Art VII.—*First.*—It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil, ..."

This is the only clause which enables the Government to legislate for the protection and welfare of the tenants; now the question is whether legislation granting the right of transferability to the tenants is authorised by the above clause. I venture to think that such legislation is not so authorised for, amongst others, the following reason, viz., that the full proprietory right conveyed to the landholder by the Permanent Settlement will be interfered with, *inasmuch as the right to transfer is an element of the proprietory right.* Article VII, s. 8, cl. 1, of the Permanent Settlement Regulation never intended that the Government reserved to itself the right to take away the proprietory right conveyed to the zamindar; it authorised legislation only for protection of the tenants in such matters as undue exaction of rents, procedure for realisation of rents and generally about all matters *short of interference of proprietory rights.*

If Government legislates in violation of the privileges given to the landholder, he can legitimately object to the discharge of the fixed assessment which he agreed to pay. Even the most clearly proved necessity for the general good can justify the Government to take away the proprietory right from the landholder conveyed to him absolutely and for ever by the Permanent Settlement Regulation.

III. *Whether occupancy holdings ought to be made transferable by legislation:*

I have already pointed out that (1) from before the Permanent Settlement up till the present time occupancy holdings have never been transferable, (2) that proprietory right in the soil was conveyed to the landholders by the Permanent Settlement Regulation, (3) that the right of transfer is an incident of proprietory right and that a person who has no such right has no right of transfer, (4) that the right of transfer by custom or local usage is recognised by case-law and by the statute, but such custom or local usage has never been proved in even a single case in the law courts, (5) that s. 8 of Art. VII of the Permanent Settlement Regulation reserves to Government the right to legislate for the protection of the tenants, but this does not mean that the *proprietory right* conveyed to the landholders may be interfered with.

For these, amongst other reasons, it is most ineqitable to take away from the landholders some of the rights and to transfer them to the cultivators.

Apart from the above considerations it is not desirable to give the right of transfer of their holdings to the raiyats; mainly forthe following reasons:

(*i*) it would be unjust to the landholders,

(*ii*) it would be ruinous and injurious to the raiyats,

(*iii*) It would be mischievous to the country.

So such legislation which is not beneficial either to the landholder or to the raiyat, *or to the country*, is neither called for, not at all desirable I propose to discuss these three matters together.

As to the landlord's interest, it has never been questioned that it is unjust if the right of transfer is given to the raiyat; not only his proprietary right will be interfered with as pointed out above, but also the following consequences will arise:

(*a*) an undesirable tenant will be thrust upon him,

(*b*) the land will be liable to pass to rival and inimical landlords,

(*c*) capitalists, planters, *mahajans*, pleaders and other powerful people will come into the place of the raiyat,

(*d*) even the right of pre-emption, if given to the landlord, would not be of any avail, for he may not have sufficient funds available to buy up the holdings transferred; moreover it is unjust to expect that a landlord who under the present law has the right of *khas* possession should be required to pay the sale price of the holding (when large fields, say one thousand acres of raiyati lands, will be purchased by capitalists, even the richest zamindars would find it difficult to buy up).

As to whether legislation granting transferability of occupancy raiyati holdings is beneficial to the raiyat, it is ordinarily thought that such legislation is desirable mainly for the following reasons:

(1) that the tenant would have proprietary right in the land and thus his status would be improved,

(2) he would be able to raise money by mortgage or sale and would be able to improve his condition by investing money in other pursuits, trade, etc.,

(3) he would be able to abandon his village and holding, and migrate to a village of his own choice and settle there by taking settlement of new holdings,

(4) the raiyat in years of bad harvest and failure of crops, as also in time of distress, marriage and other ceremonies of the family, would be able to raise money by mortgage or sale of a portion of their family property, and thus save himself from starvation and would be able to meet the necessary expenses of the ceremonies of the family.

It is unnecessary to add many other reasons which are advanced on behalf of the tenant.

Notwithstanding all these advantages I am of opinion that *it will be ruinous to the raiyat* for the reasons stated below. The rule that occupancy holdings are not transferable is a *protective measure* so far as regards the raiyat himself; it is a benefit which cannot be deprived of even by the landlord; the land will always remain in the family which will have a

permanent interest therein; he will not run recklessly into debt; he will not be able to abandon his village and to venture on an uncertain trade and migrate elsewhere for gain: he will not be able to mortgage his holding by borrowing a small sum which will swell up to a large debt. It is true that at the time of his distress he requires money; this he can secure at present by grant of *sub-leases of a portion* or the entire holding, and as he cannot according to the present law sub-let for more than nine years, the land comes into his hands again.

Chief Justice Sir Richard Garth observed as follows in his minute:—

> "to give a poor population like the Bengal raiyats the means of selling or mortgaging their tenure at pleasure is a very certain means of making them improvident. I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property, by prohibiting the alienation of it in any shape."

The position of a raiyat *who takes up a sub-lease after transfer of his holding* will be most precarious: he will be rendered into the status of an under-raiyat; Mr. D. Fitzpatrick, in his letter No. 781, dated Simla, the 15th May 1884, to the Secretary to the Government of Bengal, said as follows:—

> "There is however, a large mass of evidence to show that the *mahajan* who buys up occupancy rights, is one of the most exacting of landlords."

There is another matter to be considered, neither from the landlord's point of view, nor from the tenant's, but from the view *of the good and benefit of the country at large.* If we direct our attention to this point, we will find that it is extremely desirable that that the right of transferability should not be given; it is ruinous to the country as well as to the people. If the right of transfer is given, we will find in course of time that the cultivable area of the country will pass into the hands of capitalists, European and Indian, and the cultivation will be carried on by them by the employment of coolies. The whole peasantry will therefore be converted into coolies or day-labourers; the necessary consequences of which will be that the landless *actual cultivators* of the soil will be driven to seek employment for gain by migrating into other provinces. No one would like that large cultivating field, say, five hundred acres of land, hitherto the main support of five hundred families, should pass into the hands of a limited company, which would employ the cheapest labour available for the produce of the crops. Consequently instead of a smiling village you find a commercial concern established in the village, with a population of day-labourers. I think it should be the principal aim of the legislator to legislate in such a way as to increase the happiness of the people; but if the effect of the legislation is that the peasantry will cease to exist, that the cultivators will be reduced to the statues of coolies, that they will have to migrate to other provinces for gain—such legislation is the last thing to be desired. It is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of the provinces of this country. No doubt it is true that large fields in the hands of European and Indian capitalists or big limited companies will yield more crops with the help of up-to-date scientific implements and methods, but the whole thing will be a commercial concern.

If the land goes into the hands of capitalists, which some day in the near future it is bound to go, it will necessarily follow that there will be competition for cheap labour amongst landless cultivators of the soil and the labourers of other provinces, and if cheaper labour is found elsewhere, the Bengal cultivating class will gradually cease to exist; how would you like a Bengal district without Bengalees?

In this connection the following lines from Goldsmith's *Deserted Village* may be quoted :—

"Ill fares the land, to hast'ning ills a prey.
Where wealth accumulates, and men decay ;
Princes and lords may flourish, or may fade ;
A breath can make them, as a breath has made ;
But a bold peasantry, their country's pride,
When once destroyed, can never be supplied.

"A time there was, ere England's griefs began,
When every rood of ground maintained its man ;
For him light labour spread her wholesome store,
Just gave what life required, but gave no more :
His best companions, innocence and health,
And his best riches, ignorance of wealth.

"But times are altered ; trades unfeeling train
Usurp the land, and dispossess the swain :"

I may usefully quote here the following passage from the preamble to the Regulation II of 1793 :—

"The Hindus, who form the body of the people, are compelled, by the dictates of religion, to depend solely upon the produce of the lands for subsistence, and the generality of such of the lower orders of the natives as are not of that persuasion, are from habit or necessity in a similar predicament. The extensive failure or destruction of the crops, that occasionally arises from drought or inundation, is in consequence invariably followed by famine, the ravages of which are chiefly felt by the cultivators of the soil and the manufacturers, from whose labours the country derives both its subsistence and wealth."

This proposition, which was enunciated in the Regulation of 1793, still holds good. The above extract will show that the people *depend upon the produce of the lands for subsistence* ; but what would be the consequence if a capitalist sends all the yield of the field to a market outside the district? The local landless labourers will lose all means of subsistence.

It should also be observed here that one of the chief grounds why there should not be any legislation now granting transferability to occupancy holdings, is this that the whole matter was very fully enquired into and investigated when the Bengal Tenancy Act was passed in the year 1885 *and it was finally abandoned.* The Lieutenant-Governor in his speech in the Council agreed that there should not be any legislation granting transferability and said as follows :—

"The fact is that the practice obtains all over the country ; it extends to a considerable extent in Behar ; it is in increasing operation in all parts of Bengal. The fact that such transfers are taking place daily in almost every district of Bengal is one which no one can dispute ; it comes before us on the unquestionable authority of the Registration Department, and it is admitted by the landholders themselves. Therefore, I think, it is quite our wisest course to let the practice develop itself, and in a few years it will be very much easier to recognise the practice *from the fact of the custom having become established.*"

In view of all the circumstances disclosed in the Lieutenant-Governor's speech he strongly pressed upon the Hon'ble Mr Amir Ali to withdraw the amendment proposed by him for granting a restricted right of transfer, as pointed out above. The amendment was accordingly withdrawn. Now, the hope entertained by the Lieutenant-Governor that the practice of transfer would develop into a custom has not been fulfilled yet. The landholder has been more zealous of his right and no custom has grown up, nor has the condition of the tenantry or the country altered since 1885, so as to necessitate the change of law on the subject.

IV. *Present case law and conflict and whether there should be any legislation* :—

It is not necessary to take the trouble to cite all the rulings and references on the subject. But if the case law is summarised we find that there is a conflict on the case law and it is not in a satisfactory condition in regard to the following matters :—

(*i*) Under what circumstances transfer amounts to abandonment and landlord's right of *khas* possession.

(*ii*) Transfer of part of a holding.

(*iii*) Usufructuary mortgage and right to *khas* possession.

(*iv*) Transfer of entire holding and sub-lease by the transferee.

(*v*) Tenant's estoppel when he transfers.

(*vi*) Involuntary sales at the instance of landlord or third person in execution of money decrees.

I am of opinion that all kinds of transfers should be discouraged and prohibited and for this there should be legislation :—

(1) Allowing a landlord to get *khas* possession when there is a partial transfer as well as an entire transfer by sale, gift, bequest or usufructuary mortgage.

(2) Allowing a landlord to get *khas* possession even when a tenant after transfer takes a sub-lease.

(3) Allowing a landlord to get *khas* possession when he grants a permanent lease.

(4) Allowing a tenant not to be estopped by his own act when he mortgages a holding and allowing him to object to the sale in execution of the mortgage decree.

(5) Allowing a tenant to object to involuntary sales at the instance of either the landlord or third persons in execution of money decrees.

(6) Disentitling a transferee to claim any kind of right whatsoever against the landlord or third persons.

Clause 25, Commutation.—An under-raiyat should not be given this right, inasmuch as a raiyat who sublets generally does so for his subsistence and not for the purposes of trade or profit.

I also think that in cases (*a*) and (*b*) of the proposed section 40 (5) the court should be obliged to refuse the application of the tenant for commutation.

Burgadars.

For the maintenance of widows and poor families of the *bhadrolok* class and who cannot cultivate lands themselves, they generally get the same cultivated by other people, generally by the members of the cultivating class, on the stipulation that the owners will get a certain portion of the produce. Their maintenance is thus secured. The law in this respect is, that if the contract for cultivation creates a relationship of landlord and tenant, then the tenant is entitled to have the rent commuted under s. 40 of the Bengal Tenancy Act ; but if the relationship is that of partnership or master and servant then there cannot be any commutation. The persons who by virtue of the contract of cultivation become tenants or servants or partners are all known by the name of *burgadars.* The poor widows or the poor families, who thus employ others for cultivation, scarcely know the legal technicalities as to the distinction as to what constitutes the relationship of landlord and tenant or as to what constitutes the relationship of master and servant or partners. Consequently these poor families are deprived of their maintenance when commutation proceedings are obtained. It is therefore desirable that in the case of such *burgadars* s. 40 (commutation proceedings) should not apply. The *burgadars* are not at all prejudiced, inasmuch as they, at the time of the letting out of

Rulings on references from the mufassal Small Causes Courts, p. 113 ; 1 C. W. N. 55, 1 All 217 : 11 W. R. 151 : s. c., 2 B. L. R. 27 21 W. R. 124 ; 14 C. W. N. 629 : 21 C. W. N 505, at p. 511, 19 C W. N 1265 (Adhiar of Rungpur).

S. 40.

the land, knew that they would have to deliver produce instead of cash-rent. and if they afterwards find it inconvenient to continue cultivation they can make a surrender under s. 86.

If commutation proceedings should at all be made applicable they should be made liable to convert the produce-rent into cash-rent upon the basis of the market value of the produce.

Clauses 28, 29 and 30. Occupancy under-raiyats.—I have already stated my view that under-raiyats ought not to be given occupancy right. So the proposed sections are not necessary.

Clause 31. Presumption as to fixity of rent arising out of twenty years' payment of rent: section 50, sub-section (2).—This sub-section (2) should not be repealed. It has been held by the High Court that even in cases not governed by the Bengal Tenancy Act, the court may act on a presumption similar to the one arising under sub-section (2) of section 50, if the facts justify the necessary consequence. This is a wholesome rule; specially in cases of the tenants of this country who have generally no title deeds (and consequently the origin of the tenancy cannot be proved), it is just and equitable that the rule which has been prevailing since 1859 should not be altered. This rule was first enacted by Act X of 1859, *i.e.*, only 67 years after the Permanent Settlement, therefore the period of 20 years may, at this distant date after the Permanent Settlement, be altered into 30 years.

Clause 40. Section 65.—In view of my remarks made under clause 4 that no occupancy right should be given to an under-raiyat, the alterations proposed are not necessary.

Clause 54. Section 85.—Restriction on sub-letting by a raiyat.—The alterations proposed require serious consideration. I think that for the benefit of the raiyat there should be such restrictions to sub-letting as are provided for by the present law. A raiyat should not be allowed to transfer by sub-lease absolutely or for an indefinite period his holding; the consequence will be that he will be allowed to convert himself practically into *the status of a tenure holder*, which is not at all desirable. The raiyats in this country are *almost all* actual cultivators and their means of subsistence is mainly cultivation. To allow a raiyat to grant leases for an indefinite period will have the result that the land will go out of the raiyat's hands and he will ultimately abandon the same, inasmuch as he will cease to have any permanent interest. The reasons I have given to show why occupancy holdings should not be made transferable equally apply to shew that the right to transfer by lease in an unrestricted way should not be given.

According to the provisions of section 85, as it at present stands, a sub-lease by a raiyat shall not be valid against his landlord unless made with the landlord's consent, and a sub-lease shall not be admitted to registration if it purports to create a term exceeding nine years. According to section 49, as it at present stands, an under-raiyat is liable to be ejected (1) on the expiration of the term of a written lease (which according to the Registration Act is compulsorily registrable if it is for more than a year), (2) and when holding otherwise than under *a written lease for a term* by a notice.

So at present the position of an under-raiyat is very precarious, and it is a very wise policy that it should be so, for, a raiyat, even if he grants a sub-lease (which he is required sometimes to grant for unavoidable necessities) always expects to get his land back.

As soon as a raiyati holding is made freely transferable by lease without any restrictions, the result will be that the cultivable area of the country will come into the hands of *mahajans*, etc., and the position of the *raiyat* as landlord to such an under-tenant will be a very precarious one.

There is another *very serious objection* to the alterations proposed in section 85. It has been proposed in the draft Bill that occupancy holdings should be made transferable and that the landlord would get a transfer fee. The provision for payment of the transfer fee to the landlord *will be entirely defeated* in case free transferability by lease is given. No raiyat will sell his holding but will grant permanent leases on nominal rents and will thus avoid the payment of the transfer fee to the landlord.

I am therefore of opinion that the present sections 49 and 85 should not be altered in the way as proposed.

But I think that the following alterations should be made in section 85:—

(1) In granting sub-leases an under-raiyat should be placed under the same restrictions as a raiyat. (According to a certain ruling of the High Court an under-raiyat does not labour under the same liabilities. But it is desirable that an under-raiyat should not have greater privileges than his own landlord.)

(2) It should be expressly mentioned in section 85 that it applies to *raiyats at fixed rent as well*. (At present the majority of the rulings of the High Court are to the effect that section 18 controls section 85 and a raiyat *at fixed rent* does not labour under the disabilities provided for under section 85.)

Clause 60. Section 93.—The proposed clauses (*a*), (*c*) and (*d*) should be omitted, and the following words in the proposed clause (*e*) should be omitted:

"and in case (*ii*) on the application of more than half the tenants";

and the following words of the proposed clause (*f*) should be omitted:

"or for the estate or tenure in which the tenants are put to inconvenience or harassment as aforesaid."

At present it is necessary, having regard to the interpretation put upon section 93 in certain rulings of the High Court, to appoint a common manager of an *entire* estate although the dispute relates to *only a part of the estate*, and although the co-owners of that part are different from those of the other part of the estate. It is therefore desirable that the amendment proposed in this clause to remove this inconvenience should be made.

But the other amendment proposed (to enable tenants to apply for appointment of a common manager on the ground that there is inconvenience for payment of rent when there is a large number of co-sharer landlords) is not necessary, for section 61, which provides that rent may be deposited in the Civil Court in such cases, sufficiently protects the tenant.

Clauses 61, 62, 64 and 101. Common manager.—The amendment proposed in these clauses is open to serious objection. It has been proposed that the Collector (and not the District Judge) should nominate and control the common manager. The present law that the District Judge should nominate and control the common manager should not be altered for, amongst others, the following grounds viz. (1) no inconvenience has been felt on account of the present practice (2) the High Court will lose its powers of revision if the District Judge does not properly control the common manager.

Clause 63. Common agent.—The section proposed is new. I think that where the co-sharer landlords do not amicably agree to appoint a common agent, the Collector should not be authorised to appoint one. I therefore think the proposal to authorise the Collector to appoint a common agent is open to objection. Section 61 may be made applicable for payment of transfer fees, etc.

Clause 84. Presumption as to fixing of rent.—In view of my remarks made under clause 31, section 115 should not be repealed.

Clause 90. Proposed section 146B.—In my opinion a decree obtained in a suit in which all the tenants have not been made parties should not be considered to be a rent decree.

Clause 94. Rent-suit by a co-sharer landlord.—I am of opinion that the proposed sub-section (*8*) of section 148A should be thus altered that a co-sharer landlord who does not join in a suit brought by another co-sharer landlord will be entitled to sue separately and to obtain a decree for rent which he will be entitled to execute by proceeding against the defaulting tenure or holding if the earlier decree has been satisfied.

Clause 100. Accrual of title on sale.—According to the present Civil Procedure Code the title vests in the purchaser from the date of sale and

not from the date of confirmation of sale. The proposed change that the title should accrue from the date of confirmation of sale should not be made. Consequential changes should also be made in sub-section (7) of section 118A *See*— clause 94.

Clause 111. Homestead of raiyat.—I think that the provisions of section 182 should not be made applicable to the homestead of an *under-raiyat.*

I also think that where a raiyat holds his homestead otherwise than as a part of his tenancy, the provisions of the section should be made applicable only when the homestead is held *under the same landlord under whom the agricultural lands are held and in the same village.*

Clause 112. Usage.—It has been proposed that the illustrations to section 183 should be omitted. I think that they ought not to be repealed. There are two illustrations: (1) as to usage of sale of occupancy holding. (2) custom or usage as to the acquisition of occupancy right by an under-raiyat.

Both these illustrations seem to be necessary.

Clause 113. New Chapter XV-A.—I think the proposed legislation works a great hardship on the landlord and it interferes with the existing rights and privileges enjoyed by him.

Clause 125, sub-clause (2). Execution of decree when a sale is set aside.—The proposed change is not necessary for two reasons: (1) the protection sought for is provided for by law; when a sale is set aside, the decree-holder is entitled to proceed on with the previous application for execution and he is afforded an opportunity to put fresh process fee: (2) the alteration proposed will work a great hardship on the tenant, for, if a fresh application for execution is allowed to be made, the result will be that the landlord will be entitled to draw interest for the intervening period, for no fault of the tenant.

MATTERS NOT COVERED BY THE CLAUSES.

Whether landlords should first proceed to sell the defaulting tenure or holding.—In the committee I raised the following point, viz., that as rent was a first charge on the holding a rent decree ought to be executed in the first instance against the defaulting tenure or holding, *and not in the first instance against the person or other property of the tenant.* It was agreed that a note of dissent should be written on this subject (*vide* the proceedings of the 38th meeting of the committee, dated the 12th August, 1922).

The reasons for my proposal may mainly be summarised as follows:—

(*i*) Tenures and holdings sometimes prove to be losing concerns *for no fault of the tenant*, and it is desirable that he should have an opportunity of getting it sold. It is true that a raiyat can surrender his holding but it is difficult for him to prove it, and if there is a litigation with the landlord who questions the fact of surrender, it means the ruin of the raiyat. As to a tenure it cannot be surrendered unless the landlord agrees.

(*ii*) The landlord will not be prejudiced inasmuch as in a rent sale he gets the tenure or holding in the same condition as it was before the date of the creation of the lease, for he can annul all encumbrances created by the tenant.

(*iii*) Many landlords at present first proceed to execute the decree by attachment of the moveables of the tenant; this causes a great oppression upon him; there is sometimes an attempt for attachment of such moveables which cannot be lawfully attached.

In this connection I should state that according to section 65 of the Bengal Tenancy Act rent is a *first charge*, and probably the intention of the legislature was that it was such a charge which should be first enforced, although no doubt the case-law is otherwise.

I think that it ought now to be made clear that "charge" mentioned in section 65 is such a charge which ought to be first enforced.

In the Bill prepared by Mr. H. J. Reynolds (on special duty) in the year 1881, we find the following:—

Every tenure, under-tenure and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon.

56. (a) Every tenure, under-tenure and occupancy holding shall be deemed to be hypothecated for the rent thereof and such rent shall be a first charge thereon. *When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, until he has first brought such tenure, under-tenure or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.*

The second sentence in the above section has been italicised by me. From a reading of the marginal note it will appear that the second sentence of the above section (italicised by me) is only an explanation of the terms "hypothecation" and "charge" to be found in the earlier part of the section. The word "hypothecation" is redundant in view of the present Chapter XIV (procedure for sale); and the omission of an explanation of the word "charge" in the present section 65 does not affect the present question, for it is not always necessary for the legislature to add explanatory words to a term or expression. Now that the High Court has put an interpretation on the word "charge" different from what the legislature had meant, I think that section 65 should be made clear on the lines of Mr. Reynolds' Bill.

In this connection I may usefully quote below section 56, clause (a), of the Bill to consolidate and amend the law of landlord and tenant within the territories under the administration of the Lieutenant-Governor of Bengal (as settled by the Government of Bengal in the year 18[illegible]):

Every tenure, under-tenure, and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon.

"56 (a). Every tenure, under-tenure, and occupancy holding shall be deemed to be hypothecated for the rent thereof, and such rent shall be a first charge thereupon. When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, save as provided in Chapter XIV, until he has first brought such tenure, under-tenure, or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf."

I therefore propose, as already stated, that the present section 65 should be altered on the above lines.

Present section 192. Power to alter rent in case of new assessment of revenue.—I think that the provisions of the section seem to be inequitable inasmuch as a contract referred to in the section should not be interfered with.

ACT XXXI OF 1858.

Section 2 of Act XXXI of 1858 (Bengal Alluvial Land Settlement Act) provides that it shall be the duty of the settlement officers "to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons *entitled to any under-tenure in the original estate.*"

I think that the determination of rent according to the above section of the alluvial land of under-tenants of the original estate is not binding upon the tenant.

The Act is silent as to the procedure for settlement of rent.

In order that the settlement of rent should be binding on the parties I think the law on the subject should be made clear and it should be provided that the rent of under-tenants should be settled under Part II of Chapter X of the Bengal Tenancy Act.

According to Regulation XI of 1825, section 4, clause (1), proviso, a tenant does not acquire in the increment any interest beyond that possessed

by him in the parent tenure and is not exempted from payment of rent; the following words of clause (*1*), section 4, were repealed by the Bengal Tenancy Act, Schedule I:

Words repealed.—"Nor, if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a *khudkast* raiyat, holding a *maurasi istimrari* tenure at a fixed rate of rent per bigha, or any other description of under-tenant liable by his engagements or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable."

The above repeal was made in view of section 52 of the Bengal Tenancy Act, which provides the rules for assessment of rent of alluvial lands which are accretions to an under-tenure. The assessment may also be made under Part II of Chapter X of the Bengal Tenancy Act.

My suggestion therefore is that the same rules should be followed in regard to the determination of rent under Act XXXI of 1858.

[*It should be understood that the remarks made by me under the different clauses are also intended for consequential changes in the cognate clauses.*]

Note of Dissent by Sir John Kerr and Messrs. Duval, McAlpin, Birley, Sachse, Thompson and Khan Bahadur Muhammad Abdul Mumin.

Clause 94.—We are of opinion that the words "except by means of a suit for money brought under the Code of Civil Procedure, 1908," should be deleted from the proposed sub-section (8). These words enable individual co-sharer landlords to bring separate suits for the recovery of rent as money-suits. The object of the who e clause is, however, to provide co-sharer land ords with special facilities for realizing their own rents in one suit by making the remaining co-sharers parties to the suit. The latter are afforded an opportunity of appearing as plaint ffs in the case, and if they do not avail themselves of it, we consider that they should be debarred from harassing the tenant and bringing another suit against the tenant for the rent, whether as a rent or money-suit. One of the accepted principles of tenancy legislation in Bengal is the prevention of a multiplicity of suits againt a tenant in respect of the same cause of action. We undertook the amendment of the law on this point, in order to afford relief both to landlords and to tenants. The insertion of the words mentioned above entirely frustrates the object of the new section and, unless they are removed, we would oppose this clause.

Note of dissent by Mr. W. H. Thompson

Clause 22.—While strongly supporting the provisions suggested regarding transferability, I would express my opinion that the average landlord in Bengal does not at present get nearly as much as 25 per cent. of the consideration money for recognizing the transfer of an occupancy holding. I believe that in the five districts in which I have been Settlement Officer, Tippera, Noakhali, Faridpur, Rajshahi and Dacca, the average actually realized is not greater than 12½ per cent.

Clause 48 (b).—" A tank for the purpose of providing drinking water for the tenant or his family " is very often the very opposite of an improvement to the holding. Well over 1 per cent. of the area which would have been available for cultivation on the mainland of Noakhali district is occupied by tanks and ditches. It very often happens that what was once a single holding has a large tank in it, but the co-sharer tenants have multiplied and divided the land leaving the tank their joint property. They cannot agree to meet the necessary expenditure between them to keep the tank clean, or re-excavate it when re-excavation is necessary, and each digs a small hole to supply himself with water, leaving the tank neglected. Not only has its area been taken from the total stock of agricultural land available to the community, but its condition renders it a menace to the health of the locality. Moreover the small holes dug beside the homestead are easily contaminated and do not supply good drinking water. That can only be obtained from fairly large tanks. To give every man the right to dig his own little hole will stand in the way of obtaining the necessary co-operation between villagers for the provision of a satisfactory supply from tanks large enough to give it.

I am therefore of opinion that it is against public policy in such districts as Tippera and Noakhali to take away from the landlord his veto on the cutting of unnecessary and unsuitable tanks, and the time will come when the same will be true in the case of other districts, if it is not true of some of them already.

Clause 59.—It is my opinion that the proposed section 88B is bad law. It proposes to give to a party, who only anticipates that he will be put to loss, the right to sue for a specific relief before any damage has been done to him. His proper remedy should be by means of an injunction upon the under-tenant not " to use the land in a manner whereby the co-sharer tenants would be liable to ejectment or other penalty ".

Note of dissent by Babu Bishmadeb Das.

I regret that I have to submit a note of dissent as I cannot agree with my colleagues on some very important points. The committee has been appointed by Government, on the recommendation of the Bengal Legislative Council, embodied in a resolution moved by me for amendment of the Bengal Tenancy Act for the benefit of the raiyats specially. But the majority of the members seem to care more for the interests of the landlords than that of the tenants. I wish to make it clear that there is no real representative of the tenants on the committee. Rai Sahib Panchanan Barman, M.L.C., Mr. Syed Erfan Ali, M.L.C., Maulvi Yakinuddin Ahmed, M.L.C., and myself have been taken to be representatives of the tenants. But it is for the tenants and the public to judge how far we have been able to represent their interests.

The Permanent Settlement of Bengal was effected in a spirit of disinterested justice, "yet this truly benevolent purpose, fashioned with great care and deliberation" wrote Lord Hastings in his minute of 31st December, 1819, "has to our painful knowledge subjected almost the whole of the lower classes throughout the province to most grievous oppression—an oppression, too, so guaranteed by our pledge that we are unable to relieve the sufferers." Mr. Field in his introduction to the Regulations of the Bengal Code observed that "one of the effects of making the zamindars, proprietors, and fixing the Government demand of revenue was that all other rights in land were so completely effaced that at present it is difficult to find a single vestige of them or to ascertain what they were. The mistake of the measure lay in this that sufficient active provision was not made for the protection of the rights of other persons and that we erroneously persisted for years in regarding the relation between zemindars and raiyats as analogous to the mutual position of landlords and tenants in England." When the Bengal Tenancy Bill was introduced Lord Ripon said, "We have endeavoured to make a settlement which, while it will not deprive the landlords of any of their accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement and which we believe to be urgently needed, in the words of the settlement, for the protection and welfare of the talukdars and other cultivators of the soil ~~whose interest~~ we then undertook to guard and have to our shame too long neglected." In section 8 of the Permanent Settlement Regulation (I of 1793) it was declared as follows: "It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will whenever he may deem it proper enact such Regulations as he may think necessary for the protection and welfare of the dependent taluqdars and raiyats and other cultivators of the soil." And by section 67 of Regulation VIII of 1793 it was enacted that "implicit obedience be shown to all regulations which have been or may be prescribed by Government concerning the rents of raiyats and the collection from under-tenants and agents of every description as well as from other persons whatsoever."

These should be borne in mind in undertaking any legislation or amendment affecting the interest of tenure-holders, raiyats and other cultivators. The Hon'ble Mr. Macpherson in introducing the Bihar Tenancy Bill said: "I trust that the subject will be approached in a spirit of conciliation and good will. I am aware that the representatives of landlords are in a majority in this Council and that if they choose to exercise their power arbitrarily they can reject the proposals of the Bill, but I consider that it would be most disastrous to their own interests if they choose to adopt this course. If they reject this modest demand they will merely raise a storm of discontent and indignation which will recoil on their own heads. There are many persons who are waiting and willing to take advantage of this spirit of discontent and to foster amongst the cultivators Bolshevik ideas which, if they obtain the upper hand, will produce widespread misery throughout the province. I therefore earnestly entreat the landlords of this Council to meet the tenants half way or more than half way in their demands and claims." I also repeat the same.

The raiyats should be declared to be the owners of land with power of transfer and dealing with it in any way they like. According to Manu the soil belongs to the tiller and the landlord is entitled to one-sixth, one-eighth or one-twelfth part of the produce of land for protection from thieves, drought, want or excess of rain, etc.

The landlords should not be legally entitled to unearned increment. As the Government revenue is fixed, it is but fair that the rent due from the raiyats should also be fixed on the basis of the table of rates prepared by competent officers. The zamindars should be made liable to pay the expenses of proper education and sanitation of the tenants of their respective estates.

Clause 5(e).—The words "and required by him by reason of his connection with his holding" should be deleted from the definition of homestead.

Clause 19.—I object to section 22 being a bar to acquisition of the right of landlord by a raiyat causing extinction of his raiyati right for ever, but in converse cases it is to be treated as a permanent tenure. I propose that so long as the landlord's right subsists the raiyat may be precluded from exercising his raiyati right.

Clause 21.—Landlords should give up their claim to a share of the value of valuable trees, as it is likely to lead to dispute in almost every case. Jam and mango trees should be omitted from the explanation.

Clause 22.—This clause should be made applicable only to voluntary sales.

The right of pre-emption is proposed to be given to landlords to avoid an undesirable transferee. But this gives them more than what they deserve, and will enable them to acquire lands or realise exorbitant fees in every case, even in cases in which the transferees are cultivating raiyats of the same village or locality or near relations of the transferor.

As to transfer fee, I think that 25 per cent. of the purchase money is excessive and six times the rent exceeding 25 per cent. is exorbitant.

The first proviso to section 26G seems to me unfair to smaller co-sharers.

Clause 25.—I do not think that produce rents are generally against the public interest and strongly object to the proposed provision of amended section 40 being applicable to under-raiyats. The probable effect will be that most of the *burgadars* and *adhiars* will be deprived of their lands unless they agree to contracts barring their acquisition of occupancy rights, and people will take to cultivation by servants or hired labourers who will be more indifferent than the *burgadars* and *adhiars*.

Clause 28.—I cannot agree to confer occupancy right on all the under-raiyats irrespective of the duration of their possession and term of their lease. Under-raiyats who are holding under a written lease for a term of not more than 9 years and who may hereafter be settled for a term should not acquire occupancy right. The power of granting under-raiyati leases for a term should not be taken away from raiyats in general.

Clause 29.—I do not see any reason why under-raiyats should have occupancy rights as against their immediate landlords only and not against the superior landlords. At present the under-raiyats in most cases are liable to ejectment arbitrarily after service of notice under section 49. This was intended for preventing the transfer of lands by way of lease permanently so that raiyats may not lose any of their lands for good. But why should the raiyats now lose all their rights for nothing, and the superior landlords would not lose but rather gain, as it is proposed to provide that occupancy rights of under-raiyats will no longer be protected interests? On this point my definite proposal is that after 12 years' possession an under-raiyat will acquire occupancy right on payment of 3 years' rent as fee to his landlord, and those who have acquired the right by custom should not be deprived of that right and it should remain a protected interest. It seems quite unreasonable that the transfer fee in case of under-raiyats should be less than Rs. 25 per cent. The percentage should be equal.

Clause 31.—I strongly object to the repeal of section 50 (*2*). It will be quite unfair to the tenants of districts in which the record-of-rights has not been prepared.

Clause 43.—I object to proviso (*ii*) providing interest at 12½ per cent. after decree.

Clause 58.—Section 88 should be amended providing facilities for subdivision of tenancies and division of rent at the discretion of court and

on payment of some fee where the land is partitioned. It causes difficulty in may cases, such as is mentioned in the petition of the tenants of Sandwip.

Clause 55.—I object to clause 55. Abatement of rent should not be evidence of surrender without a registered deed, because illiterate tenants will be easily deceived by landlords.

Clause 59.—I suggest that after the word landlord in 2nd line the words "or enhances the rent" should be inserted.

Clause 71.—I object to the provision of defendants being liable to pay court-fee for raising an issue under section 105A, because they can raise such issue in a rent suit without paying any court-fee.

Clause 90.—I cannot agree to the proposed section 146B. In my opinion there cannot be a rent decree unless all the tenants are made parties. The proposed section is unsound and likely to lead to fraud and collusion.

Clause 93.—Section 148(*c*) seems to me unnecessary. By the proposed addition court's time will be wasted.

Clause 94.—The tenant should not be liable for the cost of several suits and where there are numerous co-sharer defendants who refused to join with the plaintiff the cost of service of summons and notices on them should be borne by them or by the plaintiff, if he failed to consult them.

Clause 115.—The object of section 188 was to prevent more than one suit in respect of the same tenancy. It did not contemplate co-sharer landlords acting separately. If they are allowed to sue separately it should be carefully considered whether the tenants are prejudiced in any way.

Clause 125.—This clause is unnecessary as an execution case is restored to file when a sale is set aside.

Note of Dissent by Rai Sahib Panchanan Barman, Mr. Erfan Ali, Maulvi Yakuluddin Ahmed and Babu Bishmadev Das.*

The Bengal Tenancy Act needs amendment in many respects. In making the amendments we should not lose sight of the spirit which guided the tenancy legislation since the Permanent Settlement.

When the Permanent Settlement was made the zamindar was declared to be the proprietor of the soil, whether rightly or wrongly we need not discuss that now. The agreement thus was between the Government on the one hand and the zamindar on the other and the characteristically exclusive possession of property in the zamindar was made firm and the Government demand from the zamindar on land was permanently fixed but the rights or the customary rights of the people attached to the soil were not then taken into the agreement as at that time there were not sufficient materials for the determination of the rights or the customary rights of the raiyats. So for the protection of the rights of the people the authorities had to be satisfied with the reservation of right to legislate for the protection of the dependent talukdars, raiyats and other people of the soil and with the injunction on the zamindars to use moderation towards the people. By the Permanent Settlement Regulation I of 1793 where the Governor-General in Council declared by section 8 as follows:—"It being the duty of the Ruling power to protect all classes of people more particularly those who from their situation are most helpless, the Governor-General in Council will whenever he may deem it proper enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars and raiyats and other cultivators of the soil."

The subsequent tenancy legislation had been designed to provide some means for this protection but the attempts were more or less failure. The consciousness of that failure led Lord Ripon the then Viceroy and Governor General when he introduced the Bengal Tenancy Bill in the Council in 1883 to say:—

"We have endeavoured to make a settlement which while it will not deprive the landlords of any of their accumulated advantages will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement and which we believe to be urgently needed in the words of that settlement 'for the protection and welfare of the talukdars, raiyats and other cultivators of the soil' whose interest we then undertook to guard and to our shame too long neglected."

The above is the summing up of the aims and object of the Bengal Tenancy Act 1885. The Bengal Tenancy Act was designed while safeguarding the accumulated advantages of the zamindar or the landlord to restore to the raiyat the helpless agricultural people of the soil something only something—and from the tone it seems and as it appears in fact—a small portion of the position or rights which the raiyat occupied or had at the time of the Permanent Settlement.

The Bengal Tenancy Act thus aims at the full restoration to the raiyat of his position at the time of the Permanent Settlement but gives only something.

So then it is only proper that any legislation on tenancy—

(1) should not curtail—

(a) any right or advantage that has been conferred on the raiyat or other tenants by that Act, or

(b) any right or advantage that has grown or is growing in favour of the raiyat or other tenants in consequence of the provisions of that Act, or

(c) any right or advantage in favour of the raiyat or other tenants that may be found existing or growing; but

*This member signed this note in addition to his separate note of dissent.

(2) ought to, (*a*) rectify any defect that may be found to exist in the provisions of the Act, (*b*) regulate the customs and usages that are found to exist and help their healthy growth and development for the welfare of the people of the soil; and (*c*) confer new rights required for their protection and welfare, and suited for the growing needs and conditions of the time and locality.

The present amendment should follow these lines.

2. Since the Permanent Settlement, the Tenancy legislation in Bengal has adopted the *khudkast* raiyat as the principal figure and his rights or customary rights as the principal feature, both forming the basis for consideration. The counterpart of the *khudkhasta* is the *paikhasta*. These two terms correspond to the Bengali terms used in Rangpur and its neighbouring districts, বসত প্রজা and উঠক প্রজা that is, tenants settled on the very land and cultivating, and tenants coming up from another village and cultivating. The former had superior status and permanent settled rights while the latter had inferior status and rights of unsettled character. So far as can be gathered at this distance of time and through the various screens of legislation, the main element composing the status of a *khudkasta* raiyat or বসত প্রজা and that of a *paikhasta* raiyat or উঠক প্রজা when analysed are given below:—

THE *khudkhasta* RAIYAT OR বসত প্রজা

(1) Residence in the village.

(2) Membership in the community of the village with the rights and privileges attached.

(3) Undisturbed use and occupation of the lands.

(4) Permanency and heritability of the rights in land.

(5) Liability to pay proper rent.

THE *paikhasta* RAIYAT OR উঠক প্রজা

(1) Use and occupation of the land.

(2) Liability to pay the agreed rent.

The *paikhasta* raiyat or উঠক being a member of a different village could not be fully a member of the community of the village. Even a person could not become a *khudkhasta* raiyat or বসত প্রজা immediately on taking his residence in the village but he had to be in the village for a sufficient number of years to give satisfactory proof of his intention permanently to stay in the village and his suitability to be a member before he would become a *khudkhasta* raiyat or বসত প্রজা and be taken into the membership of the community of the village.

In the legislation undertaken subsequently to the Permanent Settlement, gradually the residential qualification was eliminated; the membership of the community of the village consequently slackened.

The two elements of the membership of the community of the village—

(*a*) The requisite condition of acquisition of the status—holding land for twelve years in the village, and

(*b*) the consequence of the acquisition of that status—that is, the acquisition of occupancy right in all the land held for the time being by him in the village as a raiyat,

now constitute the status of a settled raiyat of the village.

The first two qualifications in the raiyat were immediately followed by and had as their invariable concomitant the other three elements mentioned in the analysis. The residue of the first two qualifications now constitutes

what is now called the status of a settled raiyat, which is immediately followed by and has as its invariable concomitant the right of occupancy. So we may take it broadly that the occupancy right consists of—

(1) Undisturbed use and occupation of the lands.
(2) Permanency and heritability of their rights in the lands.
(3) Liability to pay proper rent.

The occupancy right described above as distinguished from the status of a settled raiyat, can be spoken of as "simple occupancy right" confined to a particular tenancy and there is no bar to such right being acquired by a tenant. Add to it the status of a settled raiyat and you get the fully grown occupancy raiyat, capable of acquiring the simple occupancy right on all lands that he comes to hold in the village. This may be termed an "occupancy status".

The "occupancy status" can now be acquired on fulfilment of the conditions under sections 20 and 21 by any raiyat holding land in the village. So also raiyats holding at fixed rent or rent-free by virtue of their being raiyats may, in addition to their inherent simple occupancy right owing to the perpetual character of their tenancy, acquire the occupancy status.

In the previous legislation, a "right of occupancy" or an "occupancy right" is sometimes spoken of, but the right is nowhere defined or described and is sometimes confounded with the "occupancy status" of an occupancy raiyat. So we find it being thought, by lawyers, and held by the *High* Court that a raiyat at fixed rent has no right of occupancy. A raiyat holding rent-free escaped the same fate simply for not being subjected to such consideration owing to his non-liability to payment.

3. This is a defect in the Bengal Tenancy Act and should be rectified It can be done only by making the confused idea of the "occupancy right" and the "occupancy status" clear and distinct by defining or describing the "occupancy right" and the "occupancy status", apart from their subjects, and placing them in the proper place in Chapter II, which deals with the tenants generally. Other reasons for such dealing with these occupancy rights and status will appear in our notes on clause 6.

There is another defect. Sections 20 and 21 provide, how an occupancy status can be acquired by a raiyat. But there is no mode prescribed in the whole Act by which an occupancy right or simple occupancy right can be acquired. This led some people to think occupancy right can be acquired only under the conditions stated in sections 20 and 21, and not under a lease, and a newcomer holding land at a rent whether fixed in perpetuity or enhanceable is thought to have no occupancy right. But the Act contains some implied provision as to occupancy right being capable of being created by lease. Section 25 gives as one of the grounds of ejectment "the breach of a condition consistent with this Act, on breach of which by the terms of the contract between himself and his landlord he is liable to be ejected". The dependence of the destruction or subsistence of the right of occupancy on the terms of a contract between the raiyat and the landlord imply that the right of occupancy was created by a contract between the tenant and the landlord. So there is no bar to simple occupancy right being granted to a raiyat; it should be clearly provided that an occupancy right on a holding can be granted by a lease.

That the grant of such occupancy right is not impracticable or inconsistent with other right is quite clear from the fact that in the present Bill the under-raiyat has been recognised as acquiring an occupancy right by touching the land as an under-raiyat, whether there is any understanding to that effect between the parties or not. But this is an anomaly and should be rectified by prescribing for acquisition of occupancy right some conditions similar in the cases of both the raiyats and under-raiyats.

What is acquired by or rather conferred on the under-raiyat by the Sections 48 and 48A is, what I have termed a simple occupancy right as distinguished from an occupancy status, which can be acquired only by a raiyat under the present sections 20 and 21, as these two sections do not apply to under-raiyats. This occupancy right of the under-raiyat is acquired by operation of law, or it may be said the landlord gives him the occupancy

right by necessity. This is the condition of the acquisition of occupancy right by an under-raiyat and there is no reason why a raiyat should not acquire simple occupancy right similarly or by an express grant from the landlord.

The occupancy right of the under-raiyat should be not only against the immediate landlord but against all. So long as it does not "impair the value of the holding" or render it unfit for the tenancy." Certainly the landlord should not suffer any loss, but at the same time the under-raiyats should be given protection.

The landlord has let out the land on a certain rent. This is what he expects to get and the law wants him to restrict his demand to that amount, subject of course to lawful enhancements If the original raiyat goes on holding the lands the landlord is to get nothing more. On transfer he gets the fees. This can be said to be a chance gain. If his principal interest, *i.e.*, the rent, is secured, he should not grudge.

If by sub-tenancy a profit, say, not less than 20 per cent. over the rent payable by the immediate landlord, is secured, there is no insecurity of the rent, nor will that reduce the price on sale to an unreasonable extent. So the landlord's fee is not reduced to any unreasonable extent.

A person sells his land when there is no other course left to him, *i.e.*, when he can no longer indulge in sub-letting. Nor will a man pay much to get a subordinate position. So the zamindars' apprehension of the raiyat letting out land instead of selling if the under-raiyats get occupancy right, is not founded on reason and fact So if some provision as to some profit being left to the raiyat in cases of sub-tenancy is made the rent is secure, the landlord's fee on sale is reasonable.

4. Formerly the relation between the proprietor and the tenant was simple—the proprietor on the one hand and the raiyat on the other - but then there is now much complicated system of tenancy. For the proper understanding of their respective nature and for dealing with them in some adequate and effective manner, the classification of the tenants is most important and should be very carefully made. The classification must comprehend within its fold all the possible kinds of tenant and must be made on some clear principle of division and show each class with their subclasses clearly and distinctly from each other. In pursuance of this principle we have to differ from the classification set forth in clause 6, and give a classification in our notes on that clause. The reasons for making the classification will appear in notes on clause 6.

5. As a consequence of the classification of the tenants according to the principles indicated above and to show their applicability by their position, the present sections 19, 20 and 21 should be transferred to Chapter II, which deals with tenants generally, and the new arrangement of the present section between sections 5 and 22 has been indicated.

To remove the inadequate character of sub-section (1) of section 5 for the determination whether a tenant is a tenure-holder or a raiyat two sub-clauses—

(c) the circumstances existing at the time of the creation of the tenancy, and

(d) the course of dealings therewith.

have been added.

These two will help in getting a clear insight into the original intention of the parties and the real nature of the tenancy. They will to a certain extent render the use of the presumption under sub-section (5) of section 5 unnecessary; and owing to the arbitrary and in many cases prejudicial character of this presumption we also propose to repeal this sub-section (5). The reason will appear in notes on the particular classes.

6. If I am right in my view of the nature of the *khudkhasta* or *paikhasta* raiyats or বসত প্রজা and উঠ্‌কে প্রজা land of the mode of acquisition of the status of the *khudhkasta* raiyat or বসত প্রজা, it seems clear, that the proprietory right of the lands belonged in a manner to the village community, which paid the revenue or made arrangement for the payment of the revenue of the village to the Government. As none could acquire the status of a *khudkhasta* raiyat or বসত প্রজা unless he resided in the village for some

years and secured the approval of the community the holding of a *khud-khasta* raiyat or বসত প্রজা could be transferred only under certain limitations. It seems the approval of the village community was necessary.

With the decay of the village community the arrangement for the payment of the revenue was changed, every raiyat being held more or less severally liable for the revenue. In the Permanent Settlement the zamindar was declared to be the actual proprietor of the soil. He then assumed the rights and functions of the village community and turned them to his own advantage. So the approval of the village community which has been required to bring in a new-comer within the community and give the proof of his suitability to be a member was now turned to his personal gain. The zamindar's approval was now required by a person to come into the possession of certain lands, whether the villagers would like him to come or not, and given on payment of a *nazar* or on proof of security of the rent. So the suitability of a person to be a member of the village community was turned by the zamindar into suitability of a person to be a raiyat on or by payment to the zamindar of a desired sum of money.

It is to be noted here that the villagers had thus been divested of a substantial right much needed for their convenience and welfare in consequence of the Permanent Settlement, and the Government ought, in the words of Lord Ripon, "to restore to the raiyats" at least "something of the position which they occupied at the time of the Permanent Settlement" in this respect.

So the right of pre-emption, if allowed, should be allowed to the villagers The villagers purchasing lands in the village should be *exempted from the* payment of the landlord's fees, *i.e.*, they should not be *required to purchase* from the zamindar that very approval which they used to give about the time of the Permanent Settlement. And if the approval of the villagers is made to be required for an outsider to take land in the village, the *mahajan* who appears to be an object of so much fear in the discussions, may get a check. But the last is a matter of serious consideration.

For some time after the Permanent Settlement, the lands were abundant while the cultivators were few, and the zamindar had to remain satisfied with little when a person took lands on settlement or on transfer from another person. Sometimes a nominal *nazar* in token of submission to his authority was accepted as sufficient. But as time went on and with the growing increase of the population, demands for lands went on increasing, the zamindar's demand for *nazar* on settlement or transfer also went on increasing. And now the demand has grown almost unbearable in many localities. It is now the duty of the Government to check the increase and fix a limit and regulate the payment of the *nazar* and restore to the villagers something of their former position indicated above. And this is what should be done by the amendment. But the draft bill, while paying attention to the advantages of the zamindars, ignores completely the former position and convenience of the villagers.

I think there should be only one mode of assessment of *nazar* on transfer, the maximum rate of *nazar* and not an inflexible one should be fixed and no pre-emption should be allowed to the landlord. I have dealt with all questions in connection with transfer of occupancy holdings in my notes on Clause 22.

The right of pre-emption as it is called should not be allowed to the landlord. It is a false hope that the zamindars by the exercise of the prerogative will keep off the money-lender and have the land for the cultivators only. For to the landlord (the zamindar) the money-lender with his very long and weighty purse is the most desirable person and the best friend on earth. He can pay or lend as much as the landlord (the zamindar) requires.

The landlord (the zamindar) should not get the right to avoid the under-raiyat on pre-emption. It will be hard on the under-raiyat and lead to many underhand and unjust dealings to avoid the under-raiyats.

7. In all trees the raiyat should have full right. If the zamindar should get a share of the price of some trees, the trees should be mentioned by name. Any description such as "valuable for its timber" will only lead to friction and oppression. Permission to fell trees and appropriate the,

timber is required for different kinds of trees in different localities. This should be carefully enquired into. The existing right of the raiyats in trees must be maintained.

8. It is desirable in some cases to commute the produce rent of occupancy raiyats into money rent with the reservation mentioned. But it should be clearly directed that in those cases no commutation should be allowed. Simply "having regard" will do great harm and will lead to hard contested litigation, resulting in great loss and heightened antipathy between the parties.

Cases of *bona fide* produce rent should be distinguished from those which are not so. *Adhiars* or *bhaychasis* do not pay a produce rent but they take a portion of the produce as "labouring partners." These should not be treated in the same manner as the payers of *bona fide* produce rent.

The *adhiars* or *bhaychasis* have no interest in the land they are permitted to cultivate. But they should have some lien on the soil, if they cultivate for some years. They should cultivate the lands and be not ejected except on the grounds—

(1) That he has broken a condition on breach of which he is, under the terms of the contract between himself and the permitter, liable to be ejected.

(2) That he neglects to cultivate the land in the proper season in the proper manner thereby causing loss to the crops.

(3) That he refuses to grow profitable crops suitable to the soil and generally grown in the locality.

(4) That he refuses to accept in exchange for any plot of lands he cultivates lands of similar description with similar advantages.

In the very nature of the thing commutation should not be allowed.

9. It is only just that the landlord should have facilities for the recovery of rent by suit. It is only just at the same time, that each tenant's right should be properly safeguarded. No tenant should be deprived of the interest in the tenure behind his back. Tenants have been made jointly and severally liable for the rent. We should not go further and have the interest in the tenancy of those who are not parties sold in execution of a decree for rent.

It will be rather justice if it is provided that not any and every co-sharer landlord but only those who are entitled at least to half of the rent of a tenant would be entitled to sue under section 148A.

Co-sharer and joint landlords should not be treated alike. A definition of each should be given. Joint landlords should not be allowed to bring separate suits or make separate applications against the tenant. It should also be provided as to when a co-sharer landlord is entitled to bring separate suit or application against his tenant.

Co-sharer and joint tenant should also not be treated alike: each should be defined. Co-sharer tenants with several liabilities should not be made jointly liable and sued jointly.

Clause 5—Section 3, Sub-clause (a).—Joint and co-sharer landlords cannot and should not be treated alike.

(1) In suits as plaintiff joint landlords should come together. Five landlords having joint management and joint collection should not be allowed to bring five suits or make five applications to bring an unbearable burden of troubles and expenses on the tenants and give rise to difficulties as to shares and other matters.

(2) In cases of payment by the tenants and in cases of getting settlement of land one of the joint landlords may be taken as representative of all and any payment made to him and any contract made with him may be held as payment made to all or contract made with all. But that is not the case with co-sharer landlords whose management of property and collection of rent are separate.

(3) So with co-sharer tenants. The holding may be joint but the liability as to rent has been apportioned, different portions being assigned

to different co-sharer tenants. In such a case tenants are severally liable for their respective shares of rent by agreement with the landlord and in justice cannot and should not be made jointly liable. Separate suits or applications should be brought or made against them for their respective shares of liability. Besides, difficulties will arise as to adjustment of their payments and liabilities of ejectment and in other matters.

Sub-clause (b).—Simple permission to cultivate land on condition that the produce is to be shared between the permitter and the cultivator with his own plough and cattle does not and should not constitute a tenancy.

(1) If a person unable, for the time being for illness or for want of time or for some other reasons, to cultivate a certain plot of land himself asks his neighbour having plough and cattle as also time to come to his help and cultivate the land on that condition for a season only he immediately loses the use and occupation of the land for ever. This is unjust and acts very harshly on the permitter and harshly also against persons having plough and cattle and time but no land to cultivate: for persons having lands will not permit him to cultivate for fear that the latter's very touch will deprive them of the land.

(2) So it will be throwing persons in peril into greater peril.

(3) A person may ask his neighbour to cultivate his land, the price of the personal labour of the cultivator or hire of the cattle and plough and other implements which the cultivator himself provides being paid by certain share of the produce. Here he cultivates on behalf of the land-owner, which is simply a case of hire or labouring partner, but acquires the *right* of tenancy.

(4) To permit another to cultivate, it may be with his own plough and cattle, on any condition is quite a different matter, and falls far short of giving the land to his use and occupation which constitutes only one of the elements of tenancy and should not be allowed to constitute all the elements. He does not acquire, nor does the other give him, the right to hold the land but only that he would cultivate the land to get a share of the produce. It cannot be said that while cultivating, the cultivator occupies or uses or possesses the land while the other ceases to do so. In fact the possession or occupation remains with the person who permits cultivation of the land for his own purpose.

Clause 6, section 1, sub-section (i).—Section 5 shows that tenancy means the right to hold land from another person for a certain purpose. The purpose is—

(*a*) in the case of a tenure-holder—"of collecting rent or bringing it under cultivation by establishing a tenant on it", and

(*b*) in the case of a subject "of cultivating it by himself or by the members of his family or by hired servants or with the aid of partners".

The purpose for which the right to hold land is acquired deter the status of the tenant. If a man acquires the tenancy for a distinct one of the two purposes his status is clear. But some tenants acquire the right to hold land for alternative or for both the purposes, the *patta* or *kabuliyat* containing the terms—নিজ আবাদে রাখিয়া বা প্রজা পত্তন করিয়া or নিজ আবাদে রাখিয়া ও প্রজা পত্তন করিয়া ভোগ দখল করিতে থাকিবে।

that "you may enjoy the land by keeping it under direct cultivation or by establishing tenant on it": or "you may enjoy the land by keeping it under direct cultivation and by establishing tenant on it". Classification of such tenants under either head is difficult and illogical and impracticable. Such tenants must be classed under a separate heading. So also with the tenants the purpose of whose tenancy is not mentioned clearly or cannot be inferred from the terms of the *patta* or *kabuliyat*. Such tenants partake of the character of both a tenure-holder and a raiyat and their incidents should be partly those of a raiyat and partly those of a tenure-holder. I think it will be just that such tenant should have in point of enhancement the characteristics of a raiyat, in point of transfer also those of a raiyat except pre-emption, and in all other respects those of a tenure-holder.

Owing to the bilateral or dubious character such tenants should be called bilateral or dubious tenure-holders. Such tenants should not be classed as raiyats because the interest of their under-tenants and also their own may be affected.

So the tenure-holder should be classified as—

(*i*) Tenure-holder including—

(*a*) permanent tenure-holder,

(*b*) non-permanent tenure-holder,

(*c*) bilateral or dubious tenure-holder.

It is to be noticed here that incidents of temporary tenure-holder have not been determined. And the only sections that have any application to temporary tenure are section 66 and section 167. The application of sections 6, 7 and 8 to temporary tenure is doubtful.

The character of temporary tenure-holders is similar to those of the non-occupancy raiyats and some provisions similar to those of Chapter VI, and conformable to the nature of non-permanent or temporary tenure, should be made in a separate chapter.

Sub-clause (*ii*).—All the words towards the end of the clauses (*a*) (*b*) and (*c*) beginning with the word "whether" should be omitted.

These words are misleading and make the classification confusing and over-lapping each other and very clumsy.

(*a*) A raiyat at fixed rate cannot be a non-occupancy raiyat.

The right of a raiyat at fixed rate is "to hold land at the fixed rent or at the fixed rate of rent in perpetuity". It is, therefore, heritable and permanent, so the occupancy right is there and only the rent is fixed, which is more.

If the interest of the raiyat at fixed rate is held voidable by a purchaser in execution of a decree for its own arrears of rent this does not take away the permanency and heritability which are the essential characteristics of occupancy right. It was under a wrong impression as to the nature of the right of a raiyat at fixed rate or without consideration of the nature, that he has been held to have no occupancy right and to be not an occupancy raiyat. The wrong impression should be removed.

Nor can the annulment under section 167 of a raiyat's or an under-raiyat's interest on sale in execution of a decree for rent of the superior tenancy be any longer said to destroy the conception of occupancy right or the occupancy right itself. The committee have been able to conceive and confer the occupancy right on some under-raiyats only against the immediate landlord. This means that on sale of the superior tenancy in execution of a decree for rent thereof the under-raiyat's interest though with occupancy right will be annuled under section 167.

(*b*) An occupancy raiyat cannot hold at fixed rate. The moment he is given the right to hold at fixed rate he goes up to the class (*a*), *i.e.*, becomes raiyat at fixed rate.

(*c*) The non-occupancy raiyat cannot hold at fixed rate.

The non-occupancy raiyat cannot hold for more than twelve years, his rent then can be fixed only for a period less than twelve years, *i.e.*, not in perpetuity.

At the end of the term of his lease, he may be ejected under section 44 or section 46. If he holds beyond twelve years, he becomes an occupancy raiyat and is then liable to pay a fair and equitable rent under section 24.

From what is shown above it appears that the idea of the right of occupancy is a confused one, confused with the status of the occupancy raiyat which means a bundle of rights and privileges almost inseparately connected and conceived with the subject of it. Define and conceive the right of occupancy as an abstract quality apart from its subject, the conception becomes clear and by application of that conception one can easily find out which of the several kinds of tenants has that right of occupancy and which has not.

The word "occupancy" before the class of raiyat now termed as "occupancy raiyat" contributes in not a small degree to the confusion. The word "occupancy" fixes and confines the mind in its search for the occupancy right to that class of tenant which is called by the name "occupancy raiyat" to the exclusion of all other classes of tenants or under-tenants: and it appears to be a very forcible attempt to try to find out the right of occupancy in or to attribute that right to any classes of tenants or under-tenants other than that particular class. So for the clear understanding of the several classes of tenants or under-tenants in their true nature, the use of the word "occupancy" as a prefix to any particular class of tenants should be avoided.

It is now proposed clearly to recognise the right of occupancy in the rent-free raiyats and fixed rent raiyats; besides that class which has hitherto been called occupancy raiyat as also in a certain class of under-raiyats The right of occupancy is then now clearly recognised, as an attribute common to several classes of tenants or under-tenants. And to avoid confusion and to ensure accurate understanding the right of occupancy should be clearly defined as an abstract quality and the use of the word "occupancy" as a prefix to any particular class of raiyat should be avoided.

Permanent stay or stability of the raiyat in the holding or village was the (customary or otherwise) necessary outcome or inseparable accompaniment of the status of an occupancy raiyat or the right of occupancy in him, and that has now been recognised in law. So if the word "stable" is used as a prefix to that class of tenants or under-tenants that have the right of occupancy and the word "unstable" as a prefix to that class of tenants or under-tenants that have not that right, they will clearly indicate the true character of the raiyat without fail or without confusion. If the word occupancy is to be retained, the words "simple occupancy" instead of the word "occupancy" may serve the purpose.

In the cases of rent-free raiyats and fixed rent raiyats the word "stable" need not be used. They have the right of occupancy but their right to hold rent-free or at fixed rent includes and prevails over the right of occupancy. Besides the use of the word "unstable" in connection with that class of raiyats that have not the right of occupancy clearly indicates their stable character and the right of occupancy.

Rent-free holdings have been recognised as raiyati holdings and the payment of landlord's fee on transfer has been enjoined upon the purchaser of a rent-free holding in section 26 of the present draft bill. So the rent-free holding must find a place in the classification of the tenants and raiyats and its incidents whatever they may be, defined negatively or positively.

So then—

(*1*) the right of occupancy should be clearly defined; also the status of occupancy raiyat clearly defined and distinguished from the simple occupancy right,

(*2*) the classification of raiyats should be made.

And that as follows—

Raiyats including—

(*a*) Raiyats holding rent-free.

(*b*) Raiyats holding at fixed rate, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity.

(*c*) Stable raiyats or simple occupancy raiyats, *i.e.*, raiyats having a right of occupancy in the land held by them.

(*d*) Unstable raiyats or non-occupancy raiyats, *i.e.*, raiyats not having such a right of occupancy.

The raiyats holding rent-free may be dealt with in the same chapter as raiyats holding at fixed rate, *i.e.*, Chapter IV. The reason for this will appear in notes in that chapter.

Sub-Clause (iii)—Sub-clause (*ii*) of section 4, deals with under-raiyats. Following the principle indicated above the under-raiyats should be classified as—

(*a*) Stable or simple occupancy under-raiyats.

(*b*) Unstable or non-occupancy under-raiyats.

But as an under-raiyat could hitherto acquire by custom the right of occupancy and as there is no bar to a raiyat holding rent-free or to a raiyat holding at a fixed rate granting his under-raiyat the right to hold rent-free or at a fixed rate or to the under-raiyat, having by custom the right of occupancy, acquiring also by custom or grant from his landlord, the raiyat, holding rent free or at a fixed rate, the right to hold rent free or at a fixed rate, two more clauses should be added.

(*a*) Under-raiyat holding rent free.

(*b*) Under-raiyat holding at a fixed rate.

The instances may be rare but must be provided for and not neglected.

Clause 7, section 5.—To sub-section (*4*) of section 5 should be added the following clauses :—

(*c*) the circumstances existing at the time of the creation of the tenancy ; or

(*d*) the course of dealings therewith.

The local custom is of help in determining whether a tenant is a tenure-holder or a raiyat in a very limited number of cases.

The purpose for which the right of tenancy was originally acquired can be proved only in those cases in which the document creating the tenancy is available and sets forth the purpose in clear terms or contains terms from which the purpose can be clearly gathered. But even in some cases the purpose or the intention of the parties cannot be gathered from the terms of the document alone but it requires the help of the light that is thrown by the consideration of the circumstances existing at the time of the creation of the tenancy (*vide* Watson & Co. *vs.* Mahesh Narain Roy, 24 W.R. 176). However the course of dealing with the tenancy is of great help.

In cases where the documents contain no terms indicating the purpose of the tenancy, or in cases in which the document creating the tenancy is not available the purpose can only be gathered from—

(*a*) the circumstances existing at the time of the creation of the tenancy; or

(*b*) the course of dealings therewith.

For instance of (a).—If a person a cultivator by caste and profession and [illegible] takes settlement of cultivable lands near his home, it may [illegible] be taken that he takes settement of the land for cultivation ; while if a person, being a writer or service-holder by caste and profession takes settlement of lands far from the place of his service and residence, it may safely be taken that he takes it not for the purpose of cultivation but for the purpose of making profit by collecting rent from established tenants. Justice Field in Durga Prosanna Ghose *vs.* Kalidas Dutt (9 C. L. R. 449) makes the circumstances existing at the time of creation of the tenancy the only test. He begins with the remark "the only test of a raiyat's interest which can be applied in the present state of the law is to see in what condition the land was when the tenancy was created."

The state of law is almost the same since then. The circumstances have not changed much since then, or if changed in some cases or to a certain extent there are many cases in which the circumstances remain the same.

For instance of (b).—The course of dealings with a tenancy is settled according to its nature at the time of its creation and continues thereafter to be the same though the document creating the tenancy might be lost, the parties conscious of each other's rights and liabilities implicitly following that course of dealings that were settled at the time of the origin conformably with their status. And if there is any deviation the parties would certainly disagree and friction would arise.

A tenancy of two hundred bighas or somewhat more wholly under cultivation of the tenant for a good many years past can safely be said to be held for cultivating purposes.

So from the course of dealing with a tenancy one can safely infer the original intention of the parties and the nature of the tenancy.

The course of dealing as a means of ascertaining the original nature and intention of a grant has got juristic recognition. "It may be shown by evidence as to the nature of the enjoyment what a grant in its origin was. This is in fact only an application of the general maxim *optimus interpres rerum usus*." It was followed in Nidhi Krishna Basu *v.* Nistarini Dasi (21 W. R. 386) also in Haridas *v.* Upendra Narayan Shaha (10 C. W. N. cxxviii).

So it is clear the existing circumstances at the time of the creation of a tenancy as also the course of dealing therewith give good light enabling one to have a clear sight of the original purpose and the nature of tenancy. One refusing to use such a light shuts one's eyes against the light which shows the thing. If a person uses a presumption however lawful to the neglect of such a light he places an opaque disc between the light and the thing perceivable with that light and only pretends to see by refusing to see.

Much of the rights and liabilities of tenants depend on the determination of their status and if we refuse to use the means available for such determination we refuse to do justice to them and that to the loss of their tenderly cherished rights. So the two sub-clauses proposed ought to be added to sub-section (*4*).

Section 5, sub-section 5.—Sub-section (*5*) of section 5 should be repealed.

The presumption raised by the sub-section is an arbitrary one and in effect takes away much of the rights from and causes great hardship upon the tenants.

The original tenant when he first took settlement of a tenancy much exceeding a hundred standard bighas might have been in a position to employ a score of labourers or might have had a score of partners or ভাগিদার or আধিয়ার। each using three or four ploughs and would require (at the rate of five acres per plough or *hal* as is the measure in Jalpaiguri) lands in area far exceeding one hundred standard bighas—say three hundred bighas. Besides a cultivator might take lands a large portion of which he would choose to keep fallow, he might require some lands also as pasture for grazing cattle. In times fifty or sixty years before, the number of cultivators was few and lands were abundant and every man kept land much more than what he could cultivate by himself or members of his family, or by hired labourers or with the aid of partners. Actually there are persons who cultivate in the manner described above lands in area far exceeding one hundred standard bighas. And to give effect to the presumption raised by sub-section (*5*) to the neglect or to the ignorance of those facts is a serious injustice and a great prejudice to the rights of the tenants.

A man took settlement of three hundred bighas of lands for direct cultivation. He cultivated some of the lands, some lands he kept to allow as pasture ground for his cattle. He cultivated the remainder by himself and three or four members of his family and with the aid of seven or eight partners, employing say fifteen *hals*, so calculating at the rate of 5 acres or fifteen bighas for each *hal* (that is the rate in the district of Jalpaiguri) twenty ploughs take the whole of the three hundred bighas of lands. There are actually a good many of such holdings and cases of cultivation.

Now many years after the question of status is raised. The court is bound to make use of the presumption of sub-section (*5*) of section 5, whether the whole land is still under similar cultivation or partly under cultivation and partly under tenants or wholly under tenants. The tenant cannot show the original deed and is determined to be a tenure holder. Then the question arises whether he is a permanent tenure-holder. As he cannot show the original deed he is determined to be a temporary tenure-holder, thereby losing his occupancy right in the lands and becoming liable to be ejected under section 66 or some other provision of the Act, and his interest is liable or to be annulled under section 167. Even if he is determined to be a permanent tenure-holder his rent becomes liable to enhancement under section 7,

and only a small portion of the large profit he might have earned by his labour and capital is left to him, the larger portion going over to his idle landlord. This is a great hardship and injustice too.

Place of the definition of occupancy right and transfer and of sections 20 and 21.—Section 4 classifies the tenants, section 5 gives the definition or description of the different classes of tenants. It has been shown that the occupancy right should be defined or described as an abstract quality apart from its subject. The occupancy right is an attribute common to some classes of tenants and the proper place for that definition or description is Chapter II, which deals with all the classes of tenants generally and their general rights, and that below section 5.

It is proposed clearly to recognise that a raiyat at fixed rate can acquire status of a settled raiyat of the village. If holders of rent-free lands are to be recognised as raiyats it should also be clearly recognised that they also can acquire that status of a settled raiyat. On looking to the wording of sections 20 and 21, it is clear that a raiyat of any class whatsoever can become a settled raiyat of the village, when a right of occupancy is acquired in all lands for the time being held by him as a raiyat in that village. The intention of the general application of this principle of settled raiyat to all classes of raiyats seems to have been limited to a particular class of raiyats only by the provision of sections 20 and 21 being placed in Chapter V, which deals with what is technically known as occupancy raiyat. Now, as the scope of these two sections is clearly widened they should be taken out from their place of confinement and be placed in Chapter II which deals with tenants generally, that will, clearly indicate the general applicability of those two sections. As a consequence, the sections between sections 5 and 22 should have to be re-arranged in their proper sequence, the section defining or describing "occupancy right" coming next after section 5, then section 20, and then section 21, all these within Chapter II.

For similar reasons section 19 should be transferred to Chapter II.

The above arrangement of the sections showing their applicability to raiyats generally will do away with the necessity of the amending clause 14 of the draft bill.

Clause 8, section 7.—In sub-section *(g)* clause *(d)* the words "10 per cent." should be "20 per cent."

The expenses of collecting the gross rents are to be deducted but these are ordinary expenses. Sometimes complicated litigations arise causing great deal of expense and troubles. These expenses are not foreseen and taken into the amount of ordinary expenses, and though only occasional eat up the income of 10 per cent. of, say, 10 years There are other expenses also—the expenses in connection with the payment of his rent to the landlord, both legal and illegal, whether there is any litigation or not. The illegal expenses are determined to stay, however strict may be the course the legislature may take to suppress them; they have continued to stay from the time of the Permanent Settlement, defying all enactments. These expenses are not quite inconsiderable. All considered there should not be left to the tenure holder a profit less than 20 per cent.

Clause 10, section 9.—"From the date of such decree" should be "from the date on which by the decree or order the enhancement commences to take effect."

Section 154 fixes the date on which the decree for enhancement takes effect. A rest of full 15 years should be allowed. The date of decree may mean the date on which the decree was passed by the Court.

Clause 11, section 13A.—The new section 13 A is a penal one and must be clear. It may be held to be clear as regards intestate succession but not so as regards testamentary succession. I think the penalty should not be imposed upon a testamentary successor until after six months from the date when probate or letters of administration are taken or the testamentary successor comes into possession of the permanent tenure.

So also in section 14 *(2)*.

The principle has been adopted and given effect to in section 26C.

Section 14.—Sometimes a natural heir or testamentary one pays the *nazar* on an impression that the payment of the *nazar* will secure to the payer some superior advantages. Then after probate proceedings the table is turned. In such a case the landlord ought not to get the landlord's fees over again, and so a proviso should be added to section 14 to the effect that "for a succession depending on one occurrence the landlord shall not get more than one fee, though the successor may be changed."

Section 15.—In the new section 15 between the words "the Court shall" and "before confirmation" should be inserted the words "except in cases where the decree-holder or the purchaser himself is the landlord".

The reason is obvious, the landlord is to be served with a notice of the transfer and to be paid the *nazar*. But if he himself is the decree-holder or the purchaser he is more cognisant of the fact of the transfer than anybody else. If he is the purchaser only, he should not be required to pay himself through the Court. If he is the decree-holder only he invites people to come and bid for the permanent tenancy put to the auction, and should not charge any fee. This has been adopted as a general principle and was applied in section 26F in the case of occupancy holdings and should be applied here also.

Clause 14, section 18.—The raiyat at a fixed rate has occupancy right in his holdings and should become a settled raiyat after he has held that for a period of twelve years. Having a right of occupancy and being a settled raiyat in the village are two different things. The occupancy right *relates to the self-same holding but the status of being a settled raiyat of the village enables the subject of it to acquire occupancy right in this and in all the other lands for the time being held by him in the village as a raiyat.*

The raiyat at a fixed rate acquires the right to hold the land at that amount in perpetuity, *i.e.*, in addition to other rights he acquires, he acquires an indefeasible permanent heritable right, with protection from ejectment except on the ground that he has broken a condition consistent with this Act, on breach of which he is, under the term of the contract between himself and his landlord, liable to be ejected—which is the occupancy right. The occupancy right being already with him in respect of the holding it is ridiculous to require the raiyat at a fixed rate to acquire that very right in that very holding by becoming a settled raiyat of the village, after waiting for it twelve years. He is allowed to acquire the status of a settled raiyat, which enables him to acquire occupancy rights in all other lands.

According to some rulings a purchaser of a tenure in execution of a decree for rent thereof can annul the interest in a holding at a fixed rate within the tenure so held.

This is, I think, because a raiyat holding at a fixed rate is treated similarly with tenures as regards some incidents and differently from the occupancy raiyat, and no regard was paid when the decision was made to the nature of the right of a raiyat at fixed rate.

The committee agree clearly to recognise the right of occupancy in the raiyat at fixed rate. The whole clause 14, with sub-sections (*c*) and (*d*), as in the white draft bill should be restored, if the present arrangement of sections is to be maintained.

Clause 14, sub-clause 2, section 18.—The new sub-section (*2*) of section 18 is redundant and confusing and should be taken off.

1. (1) The Chapter IV is devoted to raiyats at fixed rate and the Chapter V to those who are technically known as occupancy raiyats. The two chapters are exclusive of each other and should remain so.

(2) The raiyat at fixed rate is clearly recognised as being capable under section 20, to become a settled raiyat of the village and as a consequence section 21 becomes applicable. These two sections are made applicable by express provision of law or by necessary implication.

(3) The clear recognition of a raiyat of occupancy in him does not make him an occupancy raiyat as technically known and renders him liable to pay a fair and equitable rent under section 24; the fact of the fixity of his rent barring for ever the possibility of the question of the rent being fair and equitable or being enhanceable.

(4) So the sub-section (2) is redundant and if sections 20 and 21 be transferred to Chapter II the necessity of reference for a raiyat at fixed rate to Chapter V is altogether avoided.

2. (1) The rent-free holdings stand on similar grounds with the fixed rate holdings. In the former case the rent is fixed to an amount which is nil; in the latter, the rent is fixed to an amount which is certain. In both the cases the rent is fixed to an unalterable amount in perpetuity.

In the case of rent-free holdings the right of occupancy is explicitly recognised, in the case of fixed rent holdings the right is there and should be explicitly recognised.

(2) The modes of transfer in both the cases are similar also.

For the above reasons the section 26J dealing with transfer of rent-free holding should be transferred here as section 18I This will avoid much confusion and the clumsy mention of the rent-free holding in sections 26 and 26G.

Clause 18, section 19.—A verbal change is necessary. In sub-section (*1*) of section 19 the words "this Act .... 1917" should be "this Act as amended by the Amending Act of 1922."

The present Amending Act should be referred to.

Clause 21, section 23A.—(*a*) The raiyat should have full right in all the trees in his holding, or (*b*) if that is not acceptable and the zemindar should get a share of the price of the timber only of certain trees, viz., sal, sisu and sagoon, the trees should be mentioned by name and not by description.

2. It seems that the intention of not allowing the raiyat to cut down trees seems to be to prevent him from mercilessly cutting down trees in his holding and then abandoning it and thus impairing the value of it.

The land had then no value, the raiyat's interest was doubtful, lands were plenty and the raiyats might leave one holding for another. The fruit trees, specially the mango and kantal trees, were much valued for their fruit and tempting. And so to retain the value and the tempting character of the holding those trees were not allowed to be cut down. But the circumstances have changed now. The lands are not much available, the raiyat's interest is certain and he has an interest to keep the trees standing, as that will add to the price. There is no necessity of protection of trees, and the raiyat should have full right in trees.

3. Already raiyats have full right in trees in many localities, and this right should in no way be disturbed.

4. Where zamindar's permission for cutting trees is necessary permission is asked for different kinds of trees in different localities. In Rangpur permission is necessary hardly for any other kind of trees than sal, sisu, sagoon, mango and kantal. No permission is necessary for cutting jam trees, tal trees in Rangpur and Dinajpur. Nowhere the right of the raiyat should be disturbed. As to the share to be paid to the zamindar the maximum should be fixed, as the rate of *nazar* for trees varies in different localities.

5. The pecuniary gain for trees to the zamindar is very trifling but for matters concerning trees the friction and animosity between the raiyat and the landlord's *amlas* particularly is very great. The landlord's *amlas* often tax for cutting even a small branch of a tree. If the full right in trees is recognised to be in the raiyat or in case of that not being acceptable, if the zamindar is given a share the maximum of which is not more than four annas in the rupee of the price of the timber of a certain trees mentioned by name, then a good deal of trouble is avoided.

Clause 22, section 26B.—The words "and bequeathed" should be added after the words "capable of being transferred", to make the meaning clear and bring the wording of this section in line with the wording of section 11.

Section 26D.—The relinquishment or surrender by a Hindu widow only accelerates the succession to the reversioner and should be included in the term succession as in the explanation to section 13, and be exempted

from the operation of the sections 26D and 26G. The exemption should be clearly mentioned. The words "or in cases of relinquishment or surrender by a Hindu widow accelerating succession to the reversioner" should be inserted in a proper place in both the sections 26D and 26G, or an explaining clause should be added to the interpretation section 26K.

The principle involved here has been adopted by the committee as a general one.

A gift by a person to his immediate natural heir is, in a manner, a succession made to take effect by the predecessor in his lifetime, and should be treated in the same manner as succession. An ancestor, say a father, with the view to avoid friction among his sons after his death, may himself divide the property and give to each his allotted share by a deed of gift. Thus it is in a manner accelerated succession.

2. This section fixes the landlord's fee on transfer of occupancy holding "at 25 per cent." of the consideration money or six times the annual rent of the holding whichever is more.

I think—

(1) (a) Only one mode of assessment of the landlord's fee should be adopted either a certain percentage of the consideration money or a certain times of the annual rent, preferably the former.

(b) If the landlord's fee is to be fixed in the alternative form as it is, in place of the words "whichever is more" there should be the words "which-ever is less."

(2) The maximum rate but not a fixed one should be adopted.

(3) That the maximum rate should not exceed 12½ per cent. of the consideration money or three times the annual rent.

(4) In all cases of transfer whether in or out of Court the payment of landlord's fee should be a matter to be transacted between the parties.

(5) The existing right of transfer by raiyats of occupancy holding in any locality without landlord's consent should be maintained. The right is shown in the Settlement Records.

My reasons are as follows:—

(a) A and B are two holdings exactly similar in quantity and quality and locality but differing in point of annual rent, Rs. 15 having to be paid for A, while Rs. 30 for B. Both are sold. A with the rental Rs. 15 a year must fetch at least double (say Rs. 400) as much (say Rs. 200) as B with the rental Rs. 30 would. The price is in the inverse ratio of the amount of the rent. The higher the rent the lesser the price, the lesser the rent the higher the price. In some cases the full selling capacity will bring the price which amounts to nearly six times the annual rent. And if the landlord takes on transfer of B, six times the rent, that is, Rs. 180, which is greater, almost the whole of the sale price goes to the landlord. The landlord exacts once by way of higher rent that lowers or exhausts the selling capacity of the land and if the tenant's labour and capital raises that capacity to a certain extent the landlord exacts six times the annual rent, which is almost the whole of the price, or much greater than say 25 per cent. of the consideration money. So there is double exaction by the landlord while there is the double suffering of loss on the part of the tenants. The injustice of the case is clear.

If the landlord is to take whichever is less, he may suffer while the tenant may gain. There are difficulties in both ways. These difficulties can be overcome if a certain percentage of the consideration money is fixed as the landlord's fee. In this way the selling capacity of the land is not much taxed and both the landlord and the tenant get their allotted shares fairly.

If the landlords' fee is fixed at a certain time of the annual rent, there is the great advantage of clearness and indisputability. But then the selling capacity of the land has to be seen. And if a certain number of times the annual rent is to be taken as the rate of the landlord's fee, the number should be so low as not to go in any case beyond the 25 percentage of the selling capacity. So three times the annual rent should be fixed at the most.

2. The maximum and not a certain rate should be fixed.

The selling capacity of lands is not the same everywhere as also the rate of *nazar* on transfer is not the some everywhere. A rate of *nazar* bearable in one locality is unbearable in another. In different localities different rates have developed into customary rate. In some localities the landlords and the tenants have come to agreement as to the rate of *nazar* on transfer, as the tenants of the Goyabari pargana agreed by registered *kabuliyat* to pay to the landlord, the Hon'ble Maharaja of Cossimbazar 10 per cent. of the price as *nazar*, while very recently the Zaminder of Tushbhander in the Rangpur district has issued *parwanas* declaring that only three times the annual rent shall be charged on transfer of a holding in his estate Bamania in the Nilphamari sub-Division of Rangpur. The landlords and the tenants of the Butasan pargana have come to an agreement as to the rate of *nazar* on transfer.

The rate of *nazar* varies greatly in different localities and to fix an inflexible rate for all the places will be inflicting great hardship on many localities owing to the whole price going to pay up the *nazar*, and render the right to exist in name only, and will certainly infringe the present right whether concessional, contractual, or customary of the tenant; the fixing of the maximum rate will on the one hand put a check to the unpropitiable avarice of some landlords, and on the other hand, avoid the difficulties mentioned above.

No inconvenience arises; as now the payment of landlord's fee is a matter between the parties. They will settle the amount according to the customary rate of the village or locality. The rate for each locality can be determined by the Collector.

3. The maximum rate of *nazar* on transfer should not be more than 12½ per cent. of the price, or three times the annual rent.

4. It is desirable that the payment of *nazar* should be left to the parties. That will provide accommodation of each other.

5. In some localities, the occupancy raiyats have acquired by custom the right of transfer of their holding without landlord's consent. This is an existing right and should not be taken away. The record-of-rights contains such a particular.

Clause 22, section 26 D—The proviso:—I think the proviso to section 26 D should be omitted. In case of (*a*) a certain percentum of the consideration money and in case of (*c*) certain times of the annual rent have been fixed as *nazar*; and that only should be maintained only the rate should be much lower. If litigation for determination of the market value is allowed a good deal of trouble will arise and there is no reason why this sort of litigation should not be extended to other cases of transfer.

The committee, recognising the necessity of avoiding litigation, have by majority conferred the right of pre-emption or rather of post-emption to the landlord to avoid undesirable persons. The necessity to avoid litigation is greater here; besides, if the right of pre-emption or rather of post-emption is granted to the landlord as a sefaguard against under-valuation there is no necessity of bringing a case for determination of the market value of the holding transferred. The double security given to the landlord causes double uncertainty to the tenant selling, and his purchasers; and consequent double suffering in the matter of depreciation of the value of the land and in the matter of trouble and pecuniary loss.

Clause 22, section 26F.—The proviso to sub-section (*1*) section 26 F, should be omitted.

The price fetched by the auction sale should be accepted as the fair price. If the landlord is given the right to apply for determining the

market value of the holding, the purchaser should also be given that right, as the market value is taken as the standard on which the *nazar* is to be assessed, and as in auction sale the price fetched is sometimes lower and sometimes higher than the market value.

The proviso might affect the decree-holder or the judgment-debtor in the execution case in which the holding is sold. Suppose a holding is sold in execution of a decree at Rs. 20, and the landlord within one month of getting notice applies, under this proviso, to fix the market value of the holding. The market value is found to be and fixed at Rs. 200. The judgment-debtor comes six months or a year after and applies to set aside the sale on the ground of fraud, collusion or material irregularity in the publication of the sale proclamation, and points to the value settled in the proceedings under the proviso. The sale is set aside which affects the decree-holder, the purchaser and to certain extent the landlord also. The landlord, if dissatisfied with the low price may demand and realise *nazar* according to the other mode.

It is most desirable that the payment of landlord's fee on transfer should as far as possible be settled by the party themselves without reference to courts. Here the payment of the landlords' fees may be left as a matter to be settled by the parties themselves, the Court conducting the sale being required to serve notice of the transfer upon the landlord and to decide any dispute in other respects that may arise.

Clause 22, section 26G.—The relinquishment or surrender by a Hindu widow in favour of the reversioner, as also gift by one to his immediate heir, should be exempted from the operation of this section. (*See* my note on section 26D.)

1. The right of pre-emption or of post-emption should not be given to the landlord.

(*1*) The landlords want it as a safeguard against—

(*a*) undesirable persons coming in.

(*b*) under-valuation.

(*a*) As to avoiding undesirable persons I may ask, who are the undesirable and who are the desirable persons? A tenant who is already in the estate and passes to be a good one is certainly not an undesirable person. The zamindar if required will himself give him a very good character certificate but yet the prerogative is to be exercised against him. The truth has been said by a landlord himself that the chief value of pre-emption was to guard against under-valuation. The zamindar did not in fact lay great weight upon it as a safeguard for keeping out undesirable persons coming in as long as any persons paid the *salami*.

(*b*) So the value of the prerogative of pre-emption or post-emption is admitted to be not as against the undesirable person, as in fact there are no such persons in the eye of the zamindar if he can pay the money but against under-valuation. A highly cultured gentleman's remark to this was: "If it was the main object of the pre-emption clauses it would be an advantage to cut them out altogether, and to give the zamindar a right of appealing to the court on the ground of under-valuation in every case of transfer".

We think this is the proper course and this should be adopted. There will then be one procedure to be followed.

2. There are some other reasons against this prerogative of pre-emption.

(*a*) By the exercise of this prerogative the landlord will be able to avoid any person. So the intending purchaser does not know and cannot be sure whether he will finally have the lands. By purchase he takes an uncertain right and he is unstable till the period of two months passes and the landlord does not exercise that right. This uncertainty and the consideration of the troubles and worries will deter the intending purchase. So the demand of land will be much spoiled and the value of land will be much reduced.

(*b*) The zamindar and the *amlas* now finding themselves free from the burden of getting the purchaser ejected by suit will laugh and threaten exercising the right of the so-called pre-emption, and will try to exact as

much more money over the prescribed *nazar* as possible. *So the fixity of landlord's fee will go out and the position will be as uncertain as now, or even worse, as now the bar to ejectment is removed.*

(*c*) The rich zamindars will exercise that right and will take the land in khas possession and then on exacting money to the amount of their hearts' desire will settle the land with that very person or any other who can satisfy them.

(*d*) Conscious of the very easy way of getting the lands into khas possession by the exercise of the prerogative, the zamindar's cunning *amlas* will demand satisfaction and make exacting settlement with the still unstable purchaser for persuading the zamindar not to exercise that prerogative.

(*e*) Persons in the neighbourhood of the land sold or elsewhere disappointed or baffled, or jealous of the unstable purchaser or eager themselves to have the land anyhow, will offer higher and higher bid of *nazar* to the zamindar and of bribe to the *amla*. The zeminder or his *amlas* cunning and laughing will, with the object to get as much as possible out of it, take advantage of the position, instigate the persons against each other and set them to quarrel and bite each other for getting the land. And in all these matters, the poor unstable purchaser will in no inconsiderable degree be ulcerated in body, mind and money. The considerations of the unstable character of the purchaser and the worries and anxieties as also of the expenses attending thereto will make the intending purchaser halt and think seven times and make cautious settlement, if possible, before he takes the leap of getting the *k[illegible]bala* executed and registered. This takes much off the value of the land and the tenant's rights of transferability recognised become useless.

3. Some of the members of the Committee agree to give the right of pre-emption to the zamindar under the impression that the zamindars have now by extravagance rendered themselves insolvent and have no money that may be deposited in court for getting the holding transferred to themselves. But I do not entertain that uncharitable impression. If some of the zamindars have not sufficient money others are sufficiently rich and they are [illegible]rsons most to be feared. And if the zamindars have no money, and the [illegible]ns have got it, they have sufficient cunningness, and if the other perso[illegible]that virtue their *amlas* have it in a very intensely zamindars have not got [illegible] exercise of that virtue they will continue to brilliant degree, and by the [illegible] bring other people into the arena of rivalry for the land, satisfy their greed to the great worry and ulceration in money and other things of the unstable purchaser, ultimately rendering the transferability almost useless to the raiyat, the original owner of the land,

Some objections may be raised against having really undesirable persons in the neighbourhood of the zamindar's house. The objections appear reasonable and the prerogative of pre-emption or post-emption might be conceded to the zamindar in such cases with reasonable safeguards.

Sub-section 2—Any sum due at the date of sale on account of mortgage of the land transferred is deemed to be included in the term consideration money under sub-section (*3*) 26 K. The mortgage debt might not be known at the time of sale or might not be stated in the notice of transfer. But if such mortgage debt comes to be known during the proceedings under section 26G, sub-section (*1*) or (*2*) after the proceedings are over some provision ought to be made for due payment of the mortgage debt.

The sub-section should be so formed as to make this clear.

Towards the end of the sub-section (*1*) should be added something to the effect "or direct the refund to the landlord of the balance, if any, after payment to the purchaser of the amount of the consideration money *plus* the compensation 10 *per centum*."

The reason is this: The amount if stated incorrectly in the notice may be either more or less than the right amount of consideration money. The landlord has to deposit the full amount of money stated in the notice. In case of a less amount being stated and consequently deposited, the landlord shall be required to pay the balance; in case of a larger amount being stated and consequently deposited, he shall be entitled to get back the balance.

In case of the transferee being divested of his right, all the four clauses *(a)*, *(b)*, *(c)* and *(d)* of section 156 should be applicable.

Clause *(b)* has reference to the stage of cultivation before actual sowing or planting. It will be detrimental to the interest of both the purchaser and the landlord if the apllication of that clause is refused. Suppose the holding is sold when intense preparation of the land for sowing or planting is necessary. If the purchaser does not prepare the land as required in that season, he is the loser if the landlord does not exercise the right of purchase, the landlord will be the loser if he exercises that right. For if the season of preparation for cultivation passes away without the necessary preparation being made, the land remains unsuited for sowing or planting which then becomes impracticable.

Proviso of sub-section (4) of 26 G.—If pre-emption is allowed at all and if a co-sharer landlord is allowed to apply for it, this provision should be just to all the co-sharer landlords. If the co-sharer landlord whose share is more than half is antagonistic to the other co-sharer whose interest is less than half, the larger sharer may with a view to defraud the minor sharer apply under section 26G on the last day of the two months allowed for such application. The minor sharer becomes a victim to the larger sharer's antagonistic caprice. The minor sharer may be eager and seeking to make the application, but he is not entitled to do so, or to join the larger sharer, but he is avoided somehow or other by the larger sharer. The minor sharer then should have some remedy when a co-sharer landlord applies under section 26G. The larger sharer should do it within one month of the receipt of the notice of transfer and give notice of the application in the same manner as under section 148A.

Section 26H.—This section should be omitted altogether.

1. The landlord gets the interest of the raiyats transferred to himself so he steps into the shoe of the raiyat selling, and should take subject to what any other person would take under the law.

2. The landlord should take for what he pays the consideration money and he should take what the original purchaser takes, that is, subject to incumbrances, that includes sub-tenancy as also "any sum due at the date of sale on account of mortgage of the land transferred which the purchaser has paid or agreed to pay on account of rent due before the date of the the transfer". The latter is included within the term "consideration money" under sub-section *(3)* of section 26K, and must be paid by the landlord under sub-sections *(1)* and *(2)* of section 26G. If that is protected against the land-lord, the sub-tenancy should also be protected against the landlord, for which the landlord does not pay any consideration.

3. If the under-raiyat is avoided because of the landlord being the pre-emptor the mortgage debt ought to be avoided, as in the case of a sale in execution of a decree for its own arrears of rent, for both the sub-tenancy and the mortgage are incumbrances created on the holding by the raiyat.

4. The fact of the acquirer here being the landlord and his paying 10 per cent. of the consideration money should not affect the position in any way. The right of pre-emption is intended as a safe-guard against undervaluation and not as a substantial right to secure extra gain to the landlord.

5. If the raiyat sub-lets and thereby does not render the land unfit for tenancy, that is, unfit for settling it at a rent equal to what the raiyat used to pay, the landlord does not suffer any loss.

6. Section 26H will supply much scope of underhand dealing for the ejectment or ruin of the poor under-raiyat. The real purchaser (or sometimes the raiyat himself settling the land to under-raiyats on receipt of a *nazar*, and then falling out) would get the land purchased in the name of a third person and then get the landlord to purchase the land under section 26G and then after getting all the under-raiyats ejected under section 26H get settlement of the land to himself.

Section 26I.—The limitation of usufructuary mortgage to 9 years will act very harshly on the raiyat and will sometimes compel him to sell a portion of his land where he can retain it if only he is allowed to enter into complete usufructuary mortgage for a few years more.

Section 26J.—The section 26J should be transferred to Chapter IV, below section 18, for reasons stated there.

Section 26K, Sub-section 2.—A clause should be added to the effect that in sections 26J and 26G the term transfer does not include (*a*) relinquishment or surrender by a Hindu widow to the reversioner which is included by the term succession, or (*b*) gift by one to his immediate natural heir.

(For reasons see my note on section 26D.)

Section 26K, Sub-section 3.—The consideration money should not be deemed to include all the sums due at the date of sale on account of mortgage of the land transferred but only such sum due on account of mortgage which has been paid or agreed to be paid by the purchaser. The reasons are : (*a*) Some mortgages which might not have been known at the time of sale and were not taken into consideration might be known thereafter which, if included into the consideration, the amount may rise to an amount which is far in excess of the market value of the holding sold. (*b*) Sometimes the dues on simple mortgage are very large, the creditor out of pity to the debtor remits the large portion of the dues and takes in satisfaction of the remaining sum by purchase a holding worth only a very small portion of the whole dues, say one fourth. In all such cases if the consideration money is to include the whole amount of debt on mortgage it will be great hardship on the raiyat and the purchaser. The pity which is so soothing and so favourably inclined to come forward to the rescue of the helpless debtor, and which a liberal creditor is naturally inclined to show to him, will feel very shy to rise and act or will not arise and act at all in the mind of the creditor, however liberal he might be.

In the proceedings of the 18th August the principle accepted about payment of the mortgage debt or arrears of rent was the same but it was applied in case of arrears of rents and not in case of mortgage dues.

Clause 23, section 36.—The words "from the date for the decree" should be "from the date on which, by the decree, the enhancement commences to take effect." Section 154 provides for the date on which the enhancement is to take effect. There should be a rest of full fifteen years.

Clause 25, section 40.—The proceeding under this section should be in the hands of the Civil Courts except where settlement of rent is being made under Chapter X in which case it should be in the hands of the Revenue Officers.

Clause 25, Sub-section (5).—In case of (*a*) and (*b*) the Court should not allow consideration. The produce is required as necessaries of life and if the produce rent is commuted into money rent, great hardship will be caused to the landlord. If the landlords are widows or other helpless persons, the hardship will know no bounds.

Clause 25, Sub-section (6).—If the application is unopposed the Court or Officer entertaining the application must be fully satisfied that the notice under sub-section (*4*) was duly served.

Clause 25, Sub-section (8).—In determining the amount of premium the principle—that the amount of premium should not be more than fifteen times the annual rent settled under sub-section (*6*)—should be discarded ; the words towards the end of the sub-section (*8*) beginning with the words "but the amount" should be omitted.

(1) The principle objected to involves the unreasonable principle that the higher the rent settled the higher the premium, or that the lower the rent the lower the premium, that the court is allowed to pay. On the other hand the court settling the rent under section (*6*) and determining the premium under sub-section (*8*) would be disposed to see, and justice requires it, that if the rent is high the premium should be low and if the rent is low the premium should be high. This places the matter in easy balance.

But the balance is much disturbed if the principle objected to is adopted. Take for instance the case as follows—Commutation of rent for 2 bighas of land is applied for. The market value of the land is Rs. 100. Having regard to all the circumstances if the Court settles the rent at Rs. 10 then the premium the Court may allow is not more than Rs. 150, but if it settles the rent at Rs. 4 the premium the Court may allow is Rs. 60.

Now, the Court is at liberty to grant as premium (*a*) Rs. 150 if the rent settled is Rs. 10 and (*b*) Rs. 60 if the rent settled is Rs. 4.

(2) In case (*a*) the Court can reduce the amount by Rs. 50 to make it Rs. 100 while in case (*b*) the Court cannot add to Rs. 60 to make it Rs. 100 which is required by the justice of the case.

(3) But the whole principle accepted here for the determination of premium is wrong. The landlord is to be compensated for the difference between the rent settled and the average of actual receipt. The landlord then ought to be allowed as premium the amount which invested in Banks will bring about as interest the amount of difference.

(4) In cases where by the custom the tenant has no interest in the land, he should pay as premium the amount which a person would pay as premium if he takes settlement of the lands.

Clause 25, Sub-section 13.—Sub-section (*13*) in the white draft bill has been wrongly omitted in this draft and should be restored.

Clause 27, section 46.—In sub-section (*i*) of section 46, the words "under the conditions mentioned in the foregoing section" should be omitted as the last foregoing section, *i.e.*, the "section 45" has been repealed by Bengal Act I of 1907 and Eastern Bengal Act I of 1908.

Clause 28, section 48.—(*1*) This is a new section. It gives the right of occupancy to under-raiyats. The under-raiyat gets the right not by any agreement from the landlord but he gets it by operation of this section, whether he wishes it or not. It does away with the right of contract.

(2) Here the principle of settled raiyat is done away with. This is an anomaly very harsh upon the raiyat.

(3) Like the raiyat the under-raiyat should acquire the occupancy right under certain conditions: say by holding the land for some years.

(4) If the principle of settled raiyat is done away, with with respect to under-raiyats it should in justice and propriety be done away with with respect to raiyats also. If it is true with respect to under-raiyats that "actually no raiyat sub-lets the lands with the idea of taking them back at the end of the lease," it is more so with respect to the raiyat, as the zamindar or permanent tenure-holder would not cultivate the land himself but settle the lands with tenants this or that. If the raiyat cannot cultivate the land, it is more to his advantage and he would like it, to have an under-raiyat for the term of his disability.

(5) An under-raiyat under a non-occupancy raiyat gets occupancy right in the land immediately he is admitted into occupation of it, that is the under raiyat gets a right which a landlord has not. And while the rent of the non-occupancy raiyat may be enhanced under section 43 or 46, the under-raiyat remains unaffected. So the non-occupancy raiyat may have to pay a rent higher than what he can realise from his under-raiyat.

Clause 28, section 48, proviso.—So long as the disabilities of the lessor continue and for a reasonable period thereafter the under-raiyat should not become an occupancy under-raiyat. It is with a view to help the disabled and helpless persons that this provision is made.

(2) Clause (*iii*) of the proviso is no security as the under-raiyat knowing that if he can pass only one year after the nine years he can become an occupancy under-raiyat will not be agreeable to execute a lease as contemplated in clause (*iii*) and the disabled helpless persons such as widow, old and the like for whose benefit the provision is required are quite unable to enforce the execution of the lease or to bring a suit for ejectment within the time. So there will be a great hardship on these persons.

Clause 29, section 48A.—The occupancy right of an under raiyat should be as good as that of the raiyat in its protection not only as against its immediate landlord but also as against its superior landlord. Otherwise his immediate landlord in collusion with his superior landlord may get his right defeated. The immediate landlord may get a rent-suit brought by and decreed in favour of his landlord, may have his holding sold in execution of the decree, purchase it by interested person and then get the interest of the under-raiyat annulled under section 167. If this unstable occupancy right

of an under-raiyat is made transferable the purchaser will in many cases be defrauded. The occupancy right of an under-raiyat should be made a protected interest under section 160 (*d*) and this proviso should be omitted.

The rate of *nazar* on transfer of occupancy under-raiyat's holding should be the same as in the case of transferable occupancy raiyat's holding. If in the case of bequest of an occupancy holding of an under-raiyat the *nazar* is twice of the annual rent there is no reason why it should be more in the case of bequest of occupancy holding. The words "and that the provisos to section 26 D shall not apply thereto" in the proviso, should be omitted.

In the case of transfer of a portion or share of an under-raiyati holding the acceptance of the fee by the landlord should not operate as an admission of the amount or fixity of rent or of the distribution of the rent or the arrear or of an incident attached to the holding sold, nor should it be taken as a consent for the division of the holding.

The principles of the sections 18A, 18B and 18C should be applied to the cases of occupancy under-raiyati holdings as they have been applied to the case of transfer of occupancy holdings.

Clause 31, section 50.—Sub-section (*2*) should be retained. True, 130 years have passed since the Permanent Settlement but the condition of the raiyat has not altered much. He is still the helpless fellow not able to look after his own rights. If he keeps the rent receipts for 20 or 25 years continuously no more can be expected of him. He may have a holding at fixed rate but the landlord will not mention it in the receipt and if the presumption section goes, he is rendered helpless.

(2) The zamindars on the other hand are a better and cleverer class of people, and they knowing fully well about the legal presumption existing for about a century must be presumed to keep the records in order by themselves or with the aid of their clever *amlas*.

(3) For two-thirds of the districts of the province, records-of-right have been prepared and the raiyats of those districts have enjoyed the benefit of this presumption. Their brethren of the remaining one-third of the districts should not be denied that benefit.

Clause 35, section 58, sub-section 9.—"Receipt for an instalment" should be "receipt for any amount". The money paid may or may not cover the whole amount of an instalment or instalments but the receipt must be delivered for any amount actually paid. In section 56 (*1*) the landlord is required to deliver to the tenant "a written receipt for the amount paid by him."

Clause 38, section 64, sub-clause (a).—The words "notified under section 63" should not be inserted, or in place of the words "notified under section 63" there should be the words "notified under section 63 or returned undelivered by the post office".

The amount sent by the postal money order under sub-section (*1*) of section 63 as introduced by the draft bill which cannot be said to be notified may be returned undelivered, in which case that amount shall also have to be paid under this section.

Clause 39, section 64 A.—This section provides for cases of refusal to receive rent sent by money orders or deposited in courts but there is the period between the date of deposit or date of affixing notice under section 63 in some conspicuous place of the court house on the one side and the service of the notice in the village office of landlord on the other, when the landlord with the view to harass the tenant may institute a suit for rent. Here the section 64A does not apply as there is as yet no refusal to receive.

In such cases the court should be empowered in passing the decree to take into consideration the facts stated and to refuse to allow wholly or partly the interest or damage or the cost.

The landlord or his agent may get the postal peon report "মালিক পাওয়া গেল না।". This should be guarded against.

It should be defined what constitutes refusal, *i.e.*, when the non-receipt of the deposited amount should be deemed a refusal.

Clause 42, section 67.—The section should remain as it is now.

(1) In all suits except the mortgage ones the original rate of interest ceases on the date of the institution of the suit, *i.e.*, on the date when the matter is placed into the hands of the court. In the mortgage suits the original rate continues during the period of litigation and some months after the decree which is allowed by the court as a period of grace. The court has the special power of allowing grace but beyond that period, the original rate ceases to run. In the rent suits the court has no power to allow any time of grace. So the rent suits are placed in the same position as all other suits and the original rate of interest must cease to run on the date of institution of the suit.

(2) During the period of litigation the matter is placed by plaintiff himself into the hands of the court and the court should determine what interest is to be paid.

(3) It is said that it is the duty of the tenant to pay and if he makes a default, he must take the consequence. But this duty is not a speciality in case of rent and the tenant takes the consequence as he pays at the rate of 12½ per cent. up to the date of the institution of the suit by which the plaintiff landlord takes the matter into the hands of the court.

(4) The raiyat does not pay generally because he has no power to pay. The higher rate will not increase his power to pay but only add to his burden. Had the tenant power to pay he would not like to keep the burden over his head though the interest is lower.

(5) It is said that if a lower rate of interest is allowed he will deliberately put off payment and if the rate is higher he will hasten to pay. But it is to be seen the landlord may execute the decree at any time he likes and if he gets a higher rate of interest he will put off execution of the decree and by the accumulation of interest put a heavy pressure on the tenant to his ruin.

(6) So it is not reasonable to add to the burden of the raiyat by allowing interest at 12½ per cent. till the date of realization.

Clause 43, section 68.—The new proviso should be taken away.

(1) The damage is awarded for the tenant's neglect or refusal to pay the rent without any reasonable and probable cause. The court has then to consider the causes or circumstances leading towards the neglect or refusal to pay. The raiyat might be very poor and in dire circumstances and may not afford to pay; or the landlord or his *amlas* might have done something such as a demand for some extra payment or enhancement of rent which contributed or led to the neglect or refusal to pay. The court has to take all the facts and circumstances into consideration and after weighing their effects to determine the amount of damage This discretion of the court cannot with justice be restricted as it is proposed to be done by clause (2) of the second proviso.

(2) Besides damages and interests are two alternative questions. The landlord by choosing to demand damages does by necessary implication relinquish his right to interest. So he should not be allowed to have the interest in an indirect manner nor should he be allowed to demand both interest and something over and above interest. And this is virtually what is proposed by the second proviso.

Clause 44, section 69.—Experience has shown that the power given to the landlord to have order of appraisement or division of crops made by the Collector is much abused by unscrupulous landlords. To satisfy a grudge by oppressing or tyrranising a poor tenant such landlord sometimes induces the police officers by bribes falsely to report that there is a great likelihood of breach of peace which cannot be avoided except by an order under section 69. Sometimes such landlord has recourse to these sections against poor tenants who pay money rent or even where there is no relationship of landlord and tenant inducing the police to report as above. So some provision should be made to the following effect and added to section 69, as sub-section *(5)*.

"(5) The Collector before making order under this section or where for some reasons the order has already been made, shall, at the instance of any party or on his own motion or on any information received as the case may be, enquire into and satisfy himself as to whether—*(a)* the relationship

of landlord and tenant exists; (b) the rent payable is the produce rent; (c) there is any likelihood of any breach of the peace and whether that can be avoided by any other means, or (d) in the circumstances of the case there is any ground to make the order and take such steps as seems to him proper including steps for the collection, storage, harvesting or preservation or custody of the crops."

Section 70.—Sometimes dispute arises which it is difficult and without jurisdiction for the Collector to decide. Some provisions for referring disputes to civil courts have been made in sub-section (*5*) of section 70. But this is not sufficient, the parties should be given opportunities to bring their cases before the civil court. So a provision should be added to section 70 and sub-section (7) to the effect—

"Any party may bring a suit in the civil court of the lowest grade having jurisdiction to entertain a suit for rent of the holding, for decision of any dispute that may arise between the landlord and the tenant. And on the suit being brought and notified to the Collector, the Collector shall stop further proceedings under section 69, 70 or 71 making such arrangement for the collection, storage, harvesting or preservation or custody of the crops as may seem to him proper."

Section 71.—Where the rent is taken by division of the produce, both the landlord and the tenant have some interest in the produce and the landlord should have some power of inspection of the crops without interfering with the tenant's right. A provision to that effect should be added after the sub-section (*4*) of section 71.

N.B.—A tenant paying rent by a share of the produce should cultivate the land in the proper season and proper manner. It is to be considered whether on neglect to do so he should be made liable to assessment on some such principle as is contained in sub-section (*4*) of section 71.

Clause 46, sections 74 and 75.—The poor tenants cannot withstand the oppression of the powerful landlord but suffer everything in silence. They cannot go to the Civil Court for redress. If the Collector does not look to their protection, they shall for ever remain trodden under foot of the landlord. So the Collector should be given power to protect them and a provision to the following effect should be made:—

"75A—(*1*) If a landlord or his agent realizes, except under any special enactment for the time being in force, from a tenant of such landlord any sum of money or anything in kind in excess of the rent payable by such tenant, the local cess prescribed by section 41 of the Cess Act, 1880, and the interest payable under section 67 on an arrear of such rent or of such cess, the Collector may in a summary proceeding by order impose on the landlord or on his agent a fine not exceeding two hundred rupees or twice the amount or value of what is levied, whichever is greater, or on both the landlord and his agent, fines not exceeding in the aggregate the maximum fine which may under this sub-section be imposed on either of them and may award to the tenant any portion of the fine or fines so imposed."

Where the under-raiyat's interest is avoided by ejectment of the raiyat or by sale of the superior holding in execution of a decree for rent thereof, or by pre-emption under section 26G or 26H, the under raiyat making improvements should be treated as a tenant ejected and should be given compensation under this section for improvements made by him on the holding.

An explanation to this effect to be added to section 82.

Clause 57, section 87.—In sub-section (*4*) the words "by a registered instrument" should be substituted by the words "by a written lease".

If it is not desirable to put non-occupancy raiyats to the trouble and expenses of registering their leases in all cases (*see* Amendment and Note on section 44 in clause 26), it is more so in case of non-occupancy under-raiyat.

Clause 57, section 87A.—(1) All under-raiyats should have the right under section 87A.

(2) The provision as regards the payment of arrears of rent due from the out-going raiyat should be omitted.

(3) The *nazar* should not be more than three times.

The superior landlords gets a *nazar* or increase of annual rent which is sufficient consideration for his retaining the under-raiyat. On the other hand if the arrears of rent are to be paid by the under-raiyat in addition to the *nazar* or the increased rental it will be very hardship and in almost all cases will amount to a denial of the right which it is proposed by the section explicitly to confer on the under-raiyat.

If the arrears of rent are to be paid no *nazar* should be paid.

Clause 68, section 104 H.—In sub-section 4 the words "in clause (*f*) or clause (*g*)" should be substituted by the words "in clause (*d*), (*e*), (*f*) or (*g*)."

The clauses (*d*) and (*e*) are amongst the subjects of litigation under sub-section (*3*) but directions are given in sub-section (*4*) as to the disposal of other clauses mentioned in sub-section (*3*). The clauses (*d*) and (*e*) are not mentioned. These clauses may be disposed of in the same manner as the clause (*g*) The clauses (*d*) and (*e*) refer to the correction of records not to settlement of rent.

Clause 90, section 146A and 146B.—The tenants are made jointly and severally liable. This is sufficient security for the realization of the rent. Beyond this to make the holdings liable to sale in execution of the decree passed for rent, against some of the tenants in the absence of others is a trespass and really criminal on the rights of the tenants. The tenants who are not made parties are made bound by decree passed behind their back. This will open the door of fraud and collusion between the landlord or his *amlas* and some unscrupulous sharers to deprive the others of their just rights. Money compensation for immoveable property lost, is not adequate. It might be the poor tenant in whose absence decree is made and whose interest is sold in execution of the decree might have his home and hearth in the portion of the holding sold, and it is very hard thing that he shall have to remove from his home with tears on his eyes.

The female heirs, specially the Muhammadans, will suffer greatly, the brothers and other sharers in collusion with the *amlas* will get rent-decree passed under this section and have their interest sold in execution of that decree, without letting them know about the sale and keeping them asleep over the whole matter.

In sub-section (*3*) of section 146B in place of the words "that a person or persons in possession of the portion or share" after the words "to set aside the sale" should be "that a person or persons having an interest or entitled to a portion or share" should be substituted.

If the words "in possession" are used, then the person or persons who are not in possession but entitled to a portion or a share are excluded. That is the case in numerous cases in which females succeed with males. The female heirs, helpless as they are, should not be denied the relief contemplated in this section.

To determine whether the portion or the share of the holding held by the applicants under sub-section (*3*), comprises more than one-fourth of the entire interest of the whole body of co-tenants therein would involve the decision of title to the holding. Some of the tenants might deny the title of others. So all the intricate question of a title suit will arise. Such questions of title suits should not be decided in proceedings in connection with the execution of a decree, which are more or less of summary character.

Sometimes a title suit might be going on with respect to shares of each co-tenant in the holding and landlord may in execution of a decree in a suit framed under this section 146A and 146B against some persons only, bring the whole holding to sale. Thus a conflict may arise. The right given to tenants not made parties to the rent suit to deposit the amount to prevent a sale is no sufficient security.

In effect the provision of section 146B will entail great incommensurable loss and great harassment to the co-tenants specially those who are poor and helpless.

Here only the joint tenants and not the co-sharer tenants who have their liability separated should be made jointly and severally liable.

Clause 94, section 148A.—The co-sharer landlord who may institute a suit under the section 148A must be defined. A joint landlord should not be allowed to sue for rent under section 148A.

To be entitled to sue under section 148A a co-sharer must show that his collections are separate and distinct from other co-sharers.

This is a section enabling the co-sharer landlord to bring a suit for his share of rent. His share must be defined and definitely known to the tenant. The Eastern Bengal section 148A made use of the words "where a co-sharer landlord who is entitled to sue for his rent separately" deliberately and the reason is obvious.

A co-sharer landlord who is entitled to sue for his rent separately should be defined as a co-sharer landlord whose collection of rent from tenants is separate and distinct.

A joint landlord should be defined as landlord whose collection of rent from tenants is joint.

Clause 94, section 148A, sub-section (8).—The sub-section (8) provides for the realisation of rent by means of a suit for money by landlords who dip not join as co-plaintiff under section 148A. The landlords who have big shares are generally kind to tenants and would allow some time for payment but the smaller co-sharers are rather impatient and bring suit against the tenant more often than the larger sharers. If the recovery of rent is barred fully on a co-sharer landlord not joining as a co-plaintiff it would compel all the other co-sharers to join in the suit, so the poor raiyat is deprived of any consideration that might have been shown to him by others and that is to ruin.

Clause 101, section 160, sub-section (2) of draft bill.—As has been shown in notes on clause 6, section 4 and clause 14, section 18, all the raiyats at fixed rate have occupancy right in the holding as their rights are permanent and hereditary. Their holding should be protected interest. If this sub-section is being enacted "in order to prevent a purchaser from being defrauded by an outgoing tenure-holder or proprietor giving *mokarari* right on an unduly small rent on payment of a premium" then, as the clause takes away the right of fixity of rent from all raiyats at fixed rent all the *bonâ fide* tenants are made to suffer for the fault of a few.

The cases of fraud are very few as no tenure-holder or proprietor would like to allow any person to hold at fixed rate at a low rent. If there are some special favourites their number is very few. For these very few all the raiyats at fixed rate ought not to suffer.

The cases of fraud by outgoing tenure-holders or proprietors must be of very recent date, *i.e.*, a few years before they actually go out but for them the people who are holding for 50 or 60 years or even a century ought not to suffer. Only fraudulent tenancy at fixed rate created two years before going out may be treated in the manner prescribed by this new sub-section.

It was under wrong impression of the character of the tenancy that the raiyat at fixed rate was held not to have occupancy right and his interest not to be a protected interest. This wrong impression is to be corrected by declaring explicitly that the raiyats at fixed rate have occupancy right.

Clause 105, section 167.—The notice under the section 167 should be served through the Court by which the holding was sold. This will be a more convenient procedure and will have the advantage that report of the service of the notice will form part of the execution record.

Below clause 107, section 172.—The section 172 provides that an inferior tenant may deposit into Court the money due under the decree and prevent sale of the superior holding and then deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord if he is not the defaulter may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord and so on until the defaulter is reached.

The right is given to the inferior tenant for the protection of his own interest but no mode of work has been laid out. So the right given is

scarcely, if at all, had recourse to. Some provision should be made as to how to deduct the money by the inferior tenant from the rent payable by him to his immediate landlord.

Section 174.—In section 174 not only the judgment-debtor but any person having in the tenure or holding sold any interest voidable on the sale should be allowed to pay money into Court under that section.

The lookout of the decree holder is to get money and not to have any holding sold. If any person whoever he might be pays the money the holding should be saved from sale.

Clause 109, section 178, sub-clause (b) (ii).—The clause (*d*) should not be omitted. It seems to be quite unnecessary owing to all occupancy rights being made transferable by law but the clause (*d*) provides against taking away the right of a raiyat whether occupancy or non-occupancy to transfer or bequeath his holding in accordance with the local usage under this section. The non-occupancy raiyat may sell his interest whatever he might have in his holding for the remainder of his term. It is necessary for that purpose at least.

Clause 113, section 183A.—The new section 183A has been introduced with a view to protect the interest of the jotedars of Baharband and Patiladaha parganas in Rangpur. The jotedars have been enjoying their jotes in many cases from before the time of the Permanent Settlement and in some cases from a time subsequent to that date. The leases creating the tenancies and the leases subsequent thereto were drawn up almost exactly on the same forms; all the leases making *settlement* of rent for a certain term and then containing the conditions that "on expiry of the term of the settlement you shall appear and take a second settlement." The leases were renewed sometimes on the expiration of the term, sometimes long after the expiry, and sometimes not at all. But the jotedars under the impression, supported by the acts and conducts of the zamindars that "their rights are permanent but only their rents are enhancible", were all the same in uninterrupted possession and enjoyment of the land from generation to generation; successions and transfer being recognised without objection by the zamindars. The zamindar himself sometimes took mortgages of the jotes and sometimes purchased them from the jotedars and sometimes brought them to sale in execution for decrees for rent thereof, never ejecting a jotedar under section 66 of the Bengal Tenancy Act. Thus the landlords dealt with the jotes in all respects as permanent tenures. Recently some doubts have been thrown on the permanency of the rights of the jotedars in these jotes. The High Court has held in some rulings that the jote in question was a temporary tenure. This has been a great shock to the rights of the jotedars. But justice of the case evidently requires that the permanency of their right should be clearly recognised by law. Hence this section for the protection of these jotedars.

This section is not meant for all the jotedars of Rangpur but only for the jotedars of parganas Baharband and Patiladaha, part of which lies within the district of Mymensingh, to which district also this section should apply. The description of the subject to which this section is meant to apply should be clear. As it is in the section 183A the description is very vague and should be made definite. The insertion of the words "about which some doubts are entertained as to permanency of their rights" after the words "in the district of Rangpur" and before the words "since the 14th day of March" would make it a little more clear.

I however, think the description should be by quality and character and not by locality.

The proviso.—The section 26H cannot and should not apply. The tenants under the jotedars are raiyats and not under-raiyats and the occupancy rights of raiyats are protected interests.

The section 26G should not apply to any such jotes.

The operation of section 183A should be limited to the Baharband and Patiladaha pargannas only in Rangpur and Mymensingh. The application of this section to the jote of other parts of Rangpur would affect the

interest of these jotedars prejudically. The zamindars may claim advantage of section 7 in case of enhancement of rent while in case of transfer these jotedars would not be allowed the advantages of sections 12 to 17 but be subjected to the rigorous provisions of the sections 26A to 26H.

In sub-section *(2)* of section 183A for the words "to tenures of any class" the words "to tenures of similar class" should be substituted. The reason is stated above. Besides there is no reason why it should be extended to any other class.

Clause 115, section 188.—The alterations made to this section take away the importance of the section, if the co-sharer landlord can enhance rent, eject tenants, exercise right of pre-emption bring rent suit, apply under sections 105 or 158 there remains almost nothing to be done by the landlord jointly.

A co-sharer landlord should on no account be allowed to eject a tenant. This is an encroachment upon the rights of other co-sharers and on the rights of peaceful enjoyment of the holding by the tenant. So the sub-clause *(i)* of clause *(a)* in sub-section *(1)* of section 188 must be omitted.

Note by M. Fuzlal Haq.

I have gone through the minute of dissent recorded by Mr. Syed Erfan Ali, Rai Saheb Panchanan Barman and others. I agree generally with the observations contained in this note of dissent. My difference with them lies in some minor points of detail, but I do not consider this difference sufficiently vital to necessitate a fresh note of dissent from me. I sign the report subject to these observations.

Note of dissent by Mr. L. Birley.

1. *Clause 23, section 26G*—Pre-emption. I am opposed to this proposal. My view is that the provisions made for transfer of holdings are very benefi - cial to landlords, giving them a sure means of recovering 25 per cent. of the value in place of the present uncertainty, and that this concession is therefore superfluous.

My objections to it are—

(*a*) I am afraid that some landlords will demand and obtain *salami* in excess of 25 per cent. as a condition of abstaining from using the right of pre-emption.

(*b*) If pre-emption is extensively practised by co-sharer landlords there will be a great deal of litigation, due to several co-sharers making new settlements with different tenants.

2. *Clauses 35 and 26, sections 57 and 58.*—Statement of accounts. These statements are not now given, and I do not think that they will come into general use. I therefore dislike the proposal not to give area in the receipt given at the time of payment. I think that, the landlord will always be able to exculpate himself for not granting the statement of account by saying that the tenant did not come to ask for it.

I wish to substitute one year for three months in sub-section (*4*) of section 58 of the Act. The occasions on which the Collector is likely to receive complaints from parties aggrieved are those of aggravated discontent resulting from this omission, and such discontent may take more than three months to develop. There is no reason why the Collector should be allowed to receive a complaint second hand after two years, but first hand only after three months. I have experience of the inconvenience of this restriction. The omission only occurs in the case of backward tenants, who do not readily complain.

Note of dissent by Khan Bahadur M. A. Momen.

Clause 5, section 3 (9).—The definition of the term "holding" as at present excludes all tenancies which comprise undivided shares in land. Though it is intended not to recognise an undivided share in land as a separate tenancy as theoretically it would lead to complications, it is the existing practice all over the province, and specially in Eastern Bengal districts like Barisal and Faridpur, to recognise undivided shares as separate tenancies. This will be borne out by the records-of-rights prepared of those districts where a *khatian* which stands for a tenancy often contains fractional shares of plots not always uniform. For instance it is very common to find 8 annas share in a plot settled by one landlord as "raiyati" while in other 8 annas settled by another landlord as "tenure," the entire plot in possession of the same man. These are also cases when separate tenants hold some plot as garden, homestead and graveyard jointly while cultivated plots are separate. Such tenants pay rents separately and these holdings comprise separate tenancies though they contain undivided shares in some plots. It will lead to complication if existing practice is not recognised. I therefore propose that clause 9 may read as follows:—

"Holding" means a parcel or parcels of land *or an undivided share thereof* held by a raiyat or an *under-raiyat* and forming the subject of a separate tenancy.

Clause 18, Section 20, Definition of settled raiyat.—According to the present law only a raiyat holding directly under a zamindar or tenure-holder continuously for a period of 12 years can acquire the status and privileges of a settled raiyat; but a person holding land for any number of years as an under-raiyat in a village will not acquire that or any status. The spirit of the law was to bestow the privilege and protection of occupancy rights to a *bonâ fide* agriculturist. Twelve years' continuous occupation of land in a village raises the presumption of a person being a *bonâ fide* resident agriculturist.* This applies equally to a person holding and cultivating land in the village for a length of time in any other capacity. In many districts of Bengal, and specially in Jessore, there is a very large number of cultivators who hold lands only as under-raiyats. By limiting the scope of the section to only one class the law is depriving a large number of *bonâ fide* agriculturists of this coveted privilege. In practice no distinction is made between the status of tenants holding under a zamindar and those holding under a raiyat. Unless the privilege is extended to under-raiyats also, he will be debarred from acquiring occupancy right in any land he may take under a zamindar, although he may be a resident cultivator of the village for centuries.

*Or what is called a *khud-khasht* land.

Similarly, in the case of small agricultural tenure-holders, such as howladars of Bakarganj, the present law operates very harshly. A man who possesses a small howla in the village, the whole of which may be in his actual cultivation, will not acquire occupancy right in any other land in the same way as a raiyat does. But, if we extend this privilege to small tenure-holders, it will not be possible to exclude the big ones. To avoid the danger, therefore, we may ignore the case of tenure-holders. I therefore propose that the words "as an under-raiyat" be inserted between the words "as a raiyat" and "land."

I am afraid I could not explain this properly before the Committee and was misunderstood. Some thought that this amendment would make all under-raiyats occupancy raiyats. As a matter of fact the Bill does suggest in another place to give occupancy right to under-raiyats. The intention of section 20 is different. It does not define rights in land but the status of an individual. At present as the section stands it only will elevate a person who happens to cultivate land under a proprietor or tenure-holder for 12 years into the position of a *khud-khasht* tenant, but excludes persons of similar status and position in the village who have been cultivating land under a raiyat. My amendment aims at doing away with this invidious distinction. What I mean is not that all under-raiyats who have cultivated land in a village for 12 years should acquire occupancy rights on whatever land they touch, but that such persons by such continuous cultivation should be deemed to acquire the status of a *bonâ fide* resident agriculturist

and should acquire occupancy status in any land which they may subsequently hold under a zamindar or proprietor. As a matter of fact this is the practice and no such distinction is made or understood in the country, as the present law indicates.

Section 20(3).—The words "or as an under-raiyat" may be inserted in this sub-section also after the word "raiyat."

Section 20(4).—The words "or as an under-raiyati holding" and "or as an under-raiyat" may be inserted in this sub-section respectively after the words "holding" and "raiyat."

Section 20(5).—The words "or an under-raiyat" may be inserted after the words "as a raiyat."

Section 20(6).—The words "or an under-raiyat" may be added after the words "if a raiyat."

Section 20(7).—The words "or as an under-raiyat" may be inserted in this sub-section after the word "raiyat."

Clause 22, Section 26 G (1).—The right of pre-emption should not exist in the case where the purchase by third person is in execution of a decree for arrears of rent or of a mortgage decree where the landlord is the mortgagee. These two should be added to the other exceptions in 4th line of section 26 (*G*)(*1*).

In the case of purchases by one of the several co-sharer landlords who is the mortgagee and at whose instance the holding is sold, the other co-sharer landlords should have a right to pre-empt. Otherwise in many East Bengal districts, where a rich co-sharer is also the *mahajan* and lends out money to his tenant will in time come into possession of most of the raiyat-holdings in exclusion of other co-sharer landlords. This is undesirable, and I think the co-sharer landlords in such a case should have a right to pre-empt.

Section 26H.—There are many under-raiyati holdings not held on a temporary lease and which possess *bonâ fide* occupancy rights created after 1914. Under clause (*1*) all such tenancies will be left entirely at the mercy of colluding raiyats and landlords. The agreement that raiyats will avoid transfer fee by first sub-letting and then settling does not apply to under-raiyats already created when there were no provisions in law for the payment of landlords' fees or the exercise of the right of pre-emption. Such an argument may apply to tenancies created after the passing of the amendment Act. I therefore propose to amend clause (*1*) as follows:—

"(*1*) the tenancy of such under-raiyat or his predecessor in interest was created after 1st November 1922 or created under a temporary lease after the 31st day of December 1914; and—"

Clause 28, Section 48.—This section as drafted gives the under-raiyat a better right than the raiyat so far as the acquisition of occupancy right is concerned. A person who is not a settled raiyat will not acquire occupancy right in it if he takes a land from a proprietor or tenure-holder, but he would do so if he takes it under a raiyat. To remove this anomaly I suggest the addition of the words: "who are settled raiyats of the village or have held land in the village for 12 continuous years" after the words "all under-raiyats" in section 48.

Section 75.—The reason why in spite of the penalty section the *abwab* is, if at all, on the increase, is that the tenants very seldom put the law in motion by complaint.

No power has been given to the Collector or Revenue Officer to take action on his own initiative in the case of realization of *abwab*, and although inquiries are constantly made by Collectors and Settlement Officers on tour, they are powerless to prevent these illegal exactions as the tenant will not help them by coming forward to complain. If the tenant is sufficiently strong and can successfully resist the undue claim of the landlord, he is not ordinarily made to pay any *abwab*; those who pay are generally the weak who cannot contest the illegal imposition in a court of justice. It is not reasonable to think that a tenant who is too weak to resist the illegal demand of the landlord will subsequently have the courage to bring a suit against him in court. The Behar and Orissa bill contains a similar proposal.

I therefore think that the Collector should be authorized to institute proceedings against the landlord on his own initiative or on the information received from a Revenue Officer. I accordingly propose a section on the analogy of section 58 as follows:—

"*Section 75A. Amendment.*—(*1*) If a landlord or his agent realizes any illegal cess, such landlord or agent as the case may be shall be liable to a fine not exceeding fifty rupees, to be imposed after summary inquiry by the Collector.

(*2*) The Collector may hold a summary inquiry under sub-section (*1*), either on information received from a Revenue Officer within one year, or upon complaint of the party aggrieved within 3 months from the date of payment of the illegal cess, or upon the report of the civil court.

Section 88.—As discussed in paragraph 39 my view with regard to the amendment of section 88 is that it should be made independent of the subject of the transferability of occupancy right. This section applies, as it should to the recognized tenant in both holdings and tenures, just as in the case of estates separate mutation in tenancies is very much coveted and, in many cases, becomes extremely necessary; for instance, sometimes shares in a holding or tenures descend by inheritance to distant relations who being non-resident generally transfer them to undesirable neighbours, or a portion of a holding is sold by a co-sharer to a person who is well-to-do and covets the entire holding and withholds payment of rent with the intention of ultimately buying up the remaining share. In many similar cases it becomes extremely hard on the co-sharers if there be no provision in law whereby sub-division and separate mutation can be made without the consent of the landlord. The law, as it at present stands, permits such division of land and distribution of rent only with the consent of the landlord and the co-sharer tenants. But where this is not accorded, sub-division is impossible. And this power has given a handle to the landlord to realise exorbitant amounts of *salami* from poor co-sharer tenants whose only desire is to be allowed to leave in peace. The general practice, just as in the case of transfer so also in the case of separate mutation, is that the landlords grant it subject to the payment of certain amount of *salami*, the amount of which depends on the necessity of the tenant, on his capacity to pay and the power of the landlords to realise. While we cannot make separate mutation actually compulsory, as it may lead to undue sub-division, we ought to provide for some authority which may compel an unreasonable landlord to recognize reasonable sub-division. I propose, therefore, the following amendment:—

"*Amendment of section 88.*—A division of a tenure or holding or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing, or in accordance with the following section:—

Provided that (*1*) if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(*2*) No division or distribution of rent shall be valid unless made with the consent of all the co-sharer landlords and co-sharer tenants."

"*Section 88 A.—Amendment.*—(*1*) When any landlord refuses to make a division of tenancy or distribution of rent on the application of a tenant, or where a co-sharer tenant withholds his consent to such subdivision or distribution of rent;

(*2*) or where a co-sharer tenant considers himself aggrieved by a division or distribution made by the landlord, the tenant who wants such distribution, or the tenant who is aggrieved, may apply within 6 months from the date of refusal or the date of mutation, as the case may be, to the civil court for a proper division or distribution of rent.

The civil court after notice to all the landlords or tenants of the tenure or holding may, by an order in writing, direct such division of tenancy or distribution of rent as it considers fair and equitable, provided that no order for such division or distribution shall be made if it is likely to be prejudicial to the interest of any landlord or tenant.

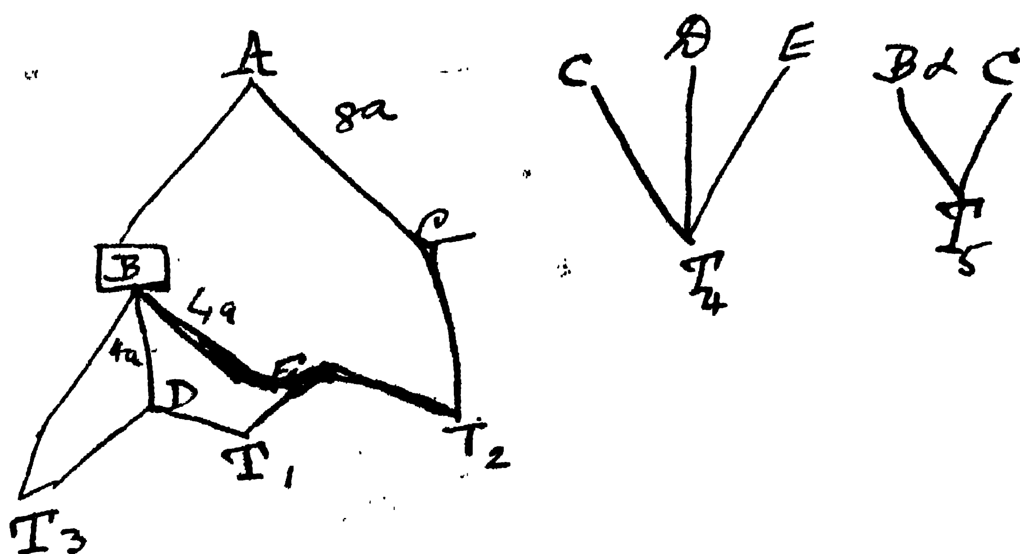
When such division or distribution is ordered by the Court it shall direct the applicant tenant to pay to the landlord two times his rent as mutation fee."

Explanation.—The following shall be considered prejudicial :—

(*i*) that the transfer results in the creation of unreasonably small holdings;

(*ii*) that the rent of the portions or shares into which the holding is divided by the transfer has been unfairly distributed.

Clause 63, section 99 A.—After mature consideration I am of opinion that the compulsory appointment of a common agent in every case where there are two or more co-sharer landlords will operate very harshly on a very large number of petty landlords in the province. There are few holdings in districts like Barisal and Faridpur which are held only under one landlord and there are many different permutations and combinations of landlords requiring the appointment of different common agents. A perusal of a tenure tree of any average mauza in Bakarganj will clearly demonstrate the extreme difficulty of appointing common agents in every case. A simple illustration below will help to make the position clear.



In this simple case under the section, 5 common agents will have to be appointed for each separate joint property. It is quite possible that the same agent may not be agreeable to all the 4 co-sharers and so 4 separate agents will have to be admitted, which will be an impossible position both for the landlords and tenants.

I therefore suggest that the appointment of a common agent may be made compulsory only when the tenants apply to the Collector for such appointment and not in every case. When parties are living in peace and manage to discharge their respective obligations without disputes we need not interfere. This section should be redrafted on the following lines :—

"(*1*) Joint co-sharer landlords may amicably appoint common agents.

(*2*) Tenants may apply to Collector and the Collector shall direct the appointment of a comm n agent.

(*3*) When co-sharers cannot agree among themselves the Collector to appoint common agent.

(*4*) The other such sections in 99A not inconsistent with above to remain.

Clause 66, section 102(c).—Under this clause it is compulsory to enter in the record-of-rights one or more of the boundaries of each plot. Formerly all the four boundaries used to be given in the *khatian.* From experience it was found that more than 50 per cent. of these entries were wrong in the final record due to corollary corrections not having been properly made at the subsequent stages in accordance with the changes in the names of actual possessors. These wrong entries were the source of much litigation. Subsequently it was decided to give only two boundaries; and this again was reduced to the present practice of recording only the northern boundary in our record. This entry of northern boundary has no practical utility, as it does not help identification and has only been retained to comply with the compulsory provision in section 102(*c*). A lot of time and trouble will be saved if we do away with the writing of this boundary. A large staff had to be maintained to check the northern boundary against the map and *khatian* plot by plot, and even then mistakes were not rare. I strongly advocate the discontinuance of the practice of writing the northern boundary. But this cannot be done unless the words "and one or more of the boundaries" be deleted.

Clause 90, section 146 B.—I object to clause (*3*) of this section including the proviso. The idea embodied here specially that of giving money compensation will be unacceptable to the tenants generally and will lead to fraud and collusion. There are many cases where a small co-sharer in a holding is a thorn in the side of the bigger co-sharer who wants to buy him up or secure the whole holding. It will be very easy for such bigger co-sharers to collude with the landlord and get the entire holding sold.

I agree to sub-sections (*1*), (*2*) and (*4*) but not to sub-section (*3*). I am willing to give a landlord the benefit of a rent decree in every case to the extent of the share purchased. There is a theoretical objection to this that the landlord when he gets khas possession becomes a joint possessor with the remaining tenants, but there is nothing unusual in this. The landlord can have khas possession by a partition.

I propose that sub-section (*3*) of 146 B. be expunged.

Note of dissent by Mr. Sachse.

Clause 113.—The jotedars, who are neither permanent tenure-holders nor raiyats under a strict interpretation of the classification in section 4 of the existing Act are not confined to the present district of Rangpur. The Dewanganj thana of the Mymensingh district was included in the district of Rangpur until 1866 and still belongs to the Patiladaha pargana, which is tauzi No. 203 of the Rangpur collectorate. It is in this area, that the protection this clause is designed to give to jotedars, who have been declared temporary tenure-holders, is most urgently needed.

Instead of the words "in the district of Rangpur" the words "in any area which has at any time been included in the district of Rangpur" or "within the limits of any estate borne on the tauzi roll of the Rangpur collectorate" should be substituted. In that case section 183 A(*2*) to which some members of the committee object, could be omitted.

It is most unfair that section 26H should be applicable to the under-tenants of jotedars, merely because the latter are technically temporary not permanent tenure holders.

Clause 5 (b).—In many areas it has become the fashion to take *kabuliyats* from produce paying tenants, in which they are termed labourers. Many of the persons, who execute such *kabuliyats* for the first time have been cultivating the lands for years, possibly for generations. The case is as strong for protecting this class of cultivator from the effects of his own contracts as there was for protecting the raiyat in 1885.

The last part of section 5 (*b*) should be amended as follows "that person shall, notwithstanding any contract to the contrary, be deemed to be a tenant."

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 52L., dated the 6th January 1923.—The following report of the Select Committee on the Goondas Bill, 1922 (with the Bill, as amended by the Committee), is hereby published for general information :—

REPORT OF THE SELECT COMMITTEE ON THE GOONDAS BILL, 1922.

WE, the undersigned members of the Select Committee, to which the Bill to provide for the control of certain goondas residing in, or frequenting the town and suburbs of Calcutta, and for their removal from Bengal was referred, have considered the Bill and the papers noted at the end of this paragraph and have the honour to submit this our report with the Bill, as amended by us, annexed hereto.

Papers No. 1.

1. Letter No. 3545, dated the 30th October, 1922, from the Secretary, Bengal Chamber of Commerce.

2. Letter No. 8 C. M.—20, dated the 4th November, 1922, from the Secretary, Calcutta Trades' Association.

3. Letter No. 452, dated the 7th November, 1922, from the Secretary, Bengal National Chamber of Commerce.

Papers No. 2.

1. Letter No. 163, dated the 13th November, 1922, from the Secretary, Marwari Association.

2. Letter, dated the 18th November, 1922, from the Secretary, Marwari Trades' Association.

3. Letter No. 62, dated the 22nd November, 1922, from the Secretary, Marwari Chamber of Commerce.

Papers No. 3.

1. Letter, dated the 26th November, 1922, from the Secretary, Indian Association.

2. Letter No. 184, dated the 29th November, 1922, from the Honorary Secretary, British Indian Association.

Papers No. 4.

1. Letter No. 14, dated the 14th December, 1922, from the Secretary, Sealdah Bar Association.

2. Letter, dated the 15th December, 1922, from the President, Bangiya Karmakar Sammilani.

3. Letter, dated the 18th December, 1922, from the Joint-Secretary, Bengal Mahajan Sabha.

4. Letter, dated the 18th December, 1922, from the Secretary, Bar Association, Calcutta Police Courts.

Paper No. 5.

Letter No. 1748, dated the 18th December, 1922, from the Chief Presidency Magistrate, Calcutta.

Paper No. 6.

Letter No. 502, dated the 18th December, 1922, from the Second Presidency Magistrate, Northern Division, Calcutta.

Paper No. 7.

Letter, dated the 18th December, 1922, from the Honorary Secretary, Central National Muhammadan Association.

Paper No. 8.

Letter, dated the 20th December, 1922, from the Secretary, District Bar Association, 24-Parganas, Alipore.

In reprinting the *Bill*, all changes made by us, have been underlined.

We have considered carefully the various opinions sent in, practically all of which are in favour of the principle of the Bill. Certain proposals have been made that the Bill should be a temporary measure, say, for three years. We are against this for the obvious reason that, if the Act succeeds, its very success could militate against its extension as it would then be contended that the need for the Act had ceased. But on its lapsing the goondas would come back again, and they would then have a long period of uncontrolled activity before public opinion forced the Government again to take special action.

There is a general consensus of opinion in favour of extension of the same procedure as is applied to Calcutta to the neighbouring industrial areas, in which the goondas also work. We have, therefore, provided for this by including in the area covered by the main provisions of the Bill, the more thickly populated thanas in the districts of the 24-Parganas and Howrah. It may be necessary to apply the Act also to the riparian and other industrial areas of the Hooghly district, and we propose that the Local Government shall have a power to extend according to requirements the main provisions of the Bill to any area within these three districts. In areas outside the jurisdiction of the Commissioner of Police it is necessary that the powers, vested in the Commissioner under the Bill, be vested in the District Magistrate, and we have tried to do this in a way that will avoid any conflict of jurisdiction.

A definition of "Bengal" has been inserted for clearness and to carry out the intention of the Bill. The definition of Commissioner of Police has also been re-drafted.

The definition of "goonda" has been very carefully considered. We are advised that the various suggestions made in favour of an exhaustive definition are based largely on an apprehension that the provisions of the Act may be applied to "political offenders." This is not the intention of the Bill and the procedure which we have suggested, under which the papers of the case are to be examined by two experienced advising Judges, seems to us the surest safeguard against any such misapplication. The term "goonda" also is well-known in popular parlance and admits of little misconception. We have further confined the provisions of the Bill by the insertion of the words "against person or property" after the words "a non-bailable offence" in clause (*i*) of sub-section (*1*) of section 3. With these safeguards we do not think that there is any reasonable apprehension that the law may be misapplied. At the same time we have examined the various definitions suggested and find them all open to serious practical and legal objections particularly those which introduce the word "habitual". We think that the present definition is a clear indication of what is intended and we are not in favour of altering it.

We are unanimously of opinion that the provisions of this Bill should be applied to Bengalee goondas as well as to those from outside the Province as now constituted. We realise the difficulty of making a hard and fast distinction between the two classes in this matter, so we have provided that the Act shall apply alike to indigenous and extraneous goondas but that any person brought under its provisions shall have an opportunity of establishing before the advising Judges that he and his father were born in Bengal. Thereafter, if it is decided that the man is a goonda, the Local Government will consider the report of the Judges as to whether he has established his claim, and, if the Local Government are satisfied that both the goonda and his father were born in Bengal, or even that the goonda himself and the family of which he is a member are definitely settled in Bengal, the milder procedure of removing him from the "Presidency area" shall be applied, instead of his being removed from the Province. This appears to us to be the only workable solution.

We have defined the "Presidency area" as Calcutta, the 24-Parganas district (outside Calcutta) and the districts of Howrah and Hooghly. Alternative suggestions as to the treatment of the goonda we have unanimously discarded. We do not believe in requiring a man to furnish security by a wholly non-judicial procedure, with the alternative of rigorous imprisonment. That has been one suggestion. On the other hand, ordinary surveillance in Calcutta is a wholly inadequate check. The goonda works largely by day and can report at the police-station at 10 A.M., and thereafter commit several depradations before midday. The only safe and reasonable course is to make the goonda leave the congested area. If he settles elsewhere in the province it is right that he should report his movements to the local police. We are satisfied that this will give reasonable protection against him to the mufassil people. A goonda in the mufassil has none of the facilities that he has in a crowded town area and he can be far better controlled.

We have examined carefully the suggestions for an advisory authority to check any possible misuse of the powers given by the Act in the case of any individual. Two special suggestions made call for notice (*i*) that the papers be laid before a Judge (or two Judges) of the High Court, (*ii*) that there should be an advisory body of local citizens associated either with the Commissioner of Police or with the Local Government. Of these (*i*) would be too expensive, nor can we expect that the Hon'ble Judges would allow themselves to be diverted from the performance of their ordinary duties for this purpose, (*ii*) has its attractions but enquiries made both by the Government and by non-official members of the Select Committee tend to show that it would not, owing to intimidation and other causes, be possible to get a suitable non-official committee to serve. The danger of reprisals is a very real one in such a case. Especially we object to the suggestion that there should be a panel of known non-official advisers from which advisers should be secretly chosen for each individual case. Such a scheme would not, in any way, command confidence either with the person reported against or the general public. We therefore consider that the advising authority should be two experienced Sessions Judges and that, while they should have before them as full a record as is possible of the facts known about the person reported against, the greatest care should be taken to prevent reprisals against the persons who have complained against the goondas. The person reported against should have a statement of the heads of the charges made against him and an opportunity of offering his explanation. The enquiry should be quite informal and untrammelled by legal technicalities.

As to the question of the final decision we agree that constitutionally the discretion must rest with the Local Government. The Judges cannot be called upon to pass a binding order based on a non-judicial procedure. The action is executive and the ultimate responsibility must be with the executive authority. At the same time we cannot conceive that an order of externment would be passed by the Government contrary to the advice of the Judges and we have specially provided that the order of the Government shall recite the Judges' conclusions.

A further point which we have had to consider is the question as to what is to be done with the person reported against while the case is before the advising Judges. It is necessary to provide that the person reported against shall appear to receive the final order of the Government, and also to provide against evasion by him of the order by taking himself out of the prohibited area before the order is passed, and returning later.

We have considered various alternatives and we are impressed with the great ease with which notices and orders can be evaded in a crowded city area in this country. It is also in our opinion essential to secure not only that the person reported against shall be made aware of the institution of the proceedings against him, but also that there shall be no question as to proper service of the process. We are unanimously of opinion therefore that proceedings on the part of the Local Government should be started by the issue of a bailable warrant for the arrest of the person reported against, and that evasion of the order should be punishable. Provision has been made for this.

Other changes are purely verbal.

The Bill was published in English in the *Calcutta Gazette* of the 1st November, 1922.

We do not consider that the Bill has been so altered as to require re-publication.

We recommend that the Bill, as amended by us, be passed.

H. L. STEPHENSON, *Member in charge.*
L. BIRLEY.
R. CLARKE.
DEBI PROSAD KHAITAN.
S. R. DAS.
D. J. COHEN.
SURENDRA NATH MALLIK.
RAZAUR RAHMAN KHAN.
S. MAHBOOB ALEY.
HASSAN SUHRAWARDY.
R. H. L. LANGFORD JAMES.
RESHEE CASE LAW.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

CALCUTTA,
The 4th January, 1923.

NOTE.—Mr. Tarit Bhusan Roy was unable owing to illness to attend the final meeting of the Committee for the signature of the report.

THE GOONDAS BILL, 1922;

(as amended by the Select Committee).

[NOTE.—The amendments made by the Select Committee have been underlined.]

A

BILL

to provide for the control of certain goondas residing in, or frequenting Calcutta or the neighbourhood of Calcutta, and for their removal elsewhere.

WHEREAS it is expedient to provide for the control of certain goondas within Calcutta and the neighbourhood of Calcutta and to provide for their removal elsewhere in certain circumstances;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section *(3)* of section 80A of the Government of India Act to the passing of this Act; (5 & 6, Geo V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.)

It is hereby enacted as follows:—

Short title and local extent.

1. *(1)* This Act may be called the Goondas Act, 1923.

(2) It extends to the whole of Bengal.

Definitions.

2. In this Act—

(a1) "Bengal" means the Presidency of Bengal, as constituted on the first day of April, 1912;

(1) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908; (Ben. Act IV of 1866) (Ben. Act II of 1866.) (XV of 1908.)

(2) "Commissioner of Police" means the officer vested with the administration of police in Calcutta under the Calcutta Police Act, 1866, the Calcutta Suburban Police Act, 1866, the Calcutta Port Act, 1890, and any Act amending any of these Acts;

(3) "goonda" includes a hooligan or other rough;

(4) "neighbourhood of Calcutta" means the areas included in—

(a) the police-stations of Baranagore, Nawapara, Dum-Dum, Tollyganj, Behala, Metiaburj, Bhangore, Tittaghar, Khardah and Budge-Budge in the district of the 24-Parganas;

(*Clause 3.*)

(*b*) the police-stations of Howrah, Sibpore, Malipanchghora, Golabaree, Lilooah, Bally and Bantra in the district of Howrah; and

(*c*) any other area which is included within the districts of the 24-Parganas, Howrah or Hooghly, and which the Local Government by notification in the *Calcutta Gazette* may include within this definition.

(*5*) "Presidency area" means Calcutta together with that portion of the district of the 24-Parganas which is not included in Calcutta as defined in this section, and the districts of Howrah and Hooghly.

Report by Commissioner of Police or District Magistrate.

3. (*1*) Whenever it shall appear to the Commissioner of Police, that any person—

(*a*) is a goonda, or a member of a gang or body of goondas, and

(*b*) [omitted.]

(*c*) is residing within or habitually visiting or frequenting Calcutta,

and that such person or that such gang or body is committing or has committed or is about to commit or is assisting or abetting the commission of—

(*i*) a non-bailable offence against person or property, or

(*ii*) the offence of criminal intimidation, or

(*iii*) an offence involving a breach of the peace,

so as to be a danger to, or cause or to be likely to cause, alarm to, the inhabitants or to any section of the inhabitants of Calcutta, the Commissioner of Police shall make a report to the Local Government with a recommendation that such person or gang or body of persons be dealt with under the provisions of this Act.

(*2*) The same powers and duties as are conferred and imposed by sub-section (*1*) on the Commissioner of Police in respect of persons or gangs or bodies of persons residing in, or habitually frequenting Calcutta, are conferred and imposed on the District Magistrate having jurisdiction in any local area, which is outside Calcutta but is included in the neighbourhood of Calcutta, in respect of all persons or gangs or bodies of persons residing within or habitually visiting or frequenting such area, who appear to such District Magistrate to be goondas or members of a gang of goondas and to be committing, or to have committed or to be about to commit, or to be assisting or abetting the commission of, any of the offences set forth in clauses (*i*), (*ii*) or (*iii*) of sub-section (*1*) so as to be a danger to, or to cause or to be likely to cause, alarm to, the inhabitants of such area,

(*Clauses 4, 5.*)

Issue of warrant on receipt of report.

4. (*1*) On receipt of the report of the Commissioner of Police or of the District Magistrate, as the case may be, the Local Government may make an order for the issue of a warrant for the arrest of the person against whom the report has been made

(*2*) The warrant shall be in such a form as shall be prescribed by the Local Government by notification in the *Calcutta Gazette* and shall be issued by a Secretary to the Local Government and shall contain a statement of the heads of the charges made against such person in the report, and shall further require such person to submit by petition to the advising Judges appointed under sub-section (*1*) of section 5 by such date as may be specified in the warrant any representation that he may desire to make.

(*3*) The officer by whom such warrant is issued shall have—

(*i*) for the enforcement of the attendance of the person, against whom the warrant is issued, at such place and at such time or times as may be specified therein (and thereafter as such officer may direct) in order to communicate to such person the final orders of the Local Government made under section 6, and

(*ii*) for the forfeiture, under section 514 of the Code of Criminal Procedure, 1898, of any bond, executed for the attendance of such person at such place and at such time or times, Act V of 1898.

all the powers of a Presidency Magistrate under the Code of Criminal Procedure, 1898; and the warrant shall for the purposes set forth in clauses (*i*) and (*ii*) be deemed to be a warrant issued by a Presidency Magistrate, for the arrest of such person to answer a charge in respect of a bailable offence committed by him within the jurisdiction of such Magistrate, and such person, in default of sufficient security being furnished, may, unless such officer otherwise directs, be detained in custody until the final order of the Local Government under section 6 is communicated to him.

Local Government to place report before advising Judges.

5. (*1*) After issue of the warrant under section 4, the Local Government shall forthwith cause the report of the Commissioner of Police or of the District Magistrate, as the case may be, with all material facts and circumstances in their possession relevant to the same to be placed before two advising Judges, of whom one shall be a District and Sessions Judge of Alipore and the other a District and Sessions Judge who has served as such for a period of not less than five years.

(*Clause 5.*)

(*2*) The advising Judges shall consider in camera the report and the other facts and circumstances, if any, adduced before them by the Local Government, and any representation, submitted to them by the person against whom the report has been made within the time fixed by section 4 or such further time as they may allow, and shall call for such further information, if any, as appears to them to be necessary for the purpose of tendering their advice on the report. They may also, if they think fit, give to the person against whom the report has been made an opportunity of appearing in person before them to offer his explan[illegible] and may at the instance of that person require the attendance of any other person, whose statement may support that explanation :

Provided that—

(*a*) nothing in this section shall be deemed to entitle the person whose case is before the advising Judges to appear or be represented before them by pleader, nor shall the Local Government be so entitled,

(*b*) the advising Judges shall not disclose to the person in question any fact the communication of which might endanger the safety of any individual, and

(*c*) the advising Judges shall not be bound to observe the rules of evidence and shall not permit the putting of any question which may endanger the safety of any individual.

(*3*) Any statement made to the advising Judges by any person other than the person whose case is before them shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code, and the advising Judges XLV of 1860.
shall for the purpose of securing the attendance of any person under the provisions of sub-section (*2*) have all the powers of a District Magistrate under the Code of Criminal Procedure, 1898. V of 1898.

(*4*) When the advising Judges have reached their conclusions, they shall report the same in writing to the Local Government.

(*5*) If the person whose case is under their consideration claims, when submitting his representation or when appearing before the advising Judges, that both he and his father were born in Bengal, the advising Judges shall give him an opportunity of establishing his claim, and shall also give to the Commissioner of Police or the District Magistrate, as the case may be, an opportunity of rebutting the same, and at the time of submission of their report to the Local Government shall record their opinion as to

(*Clauses 6, 7.*)

whether such person has established that he and his father were born in Bengal.

Order of removal by Local Government.

6. (*1*) On receipt of the report of the advising Judges the Local Government, if satisfied that the person against whom the report has been made should be removed elsewhere, may by an order reciting the conclusions of the advising Judges, as reported by those Judges—

(*a*) direct him to leave Bengal within such time, by such route or routes, and for such period as may be stated in the order, or

(*b*) where the Local Government are satisfied that both he and his father were born in Bengal, or that he is a member of a family which has definitely settled in Bengal and is himself so settled, direct him to leave the Presidency area within such time, by such route and for such period as may be stated in the order, and may in that case further order that he shall during the same period notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence to the officer appointed by the Local Government in this behalf.

(*2*) The order of the Local Government under sub-section (*1*) shall be final, and shall not be called in question in any subsequent proceeding under section 9 or section 10.

Evasion of orders.

7. Where any person on whom a warrant has been served under section 4—

(*i*) fails to attend at the place and at the time or times specified in the warrant and thereafter when required in order to receive the order of the Local Government under section 6, or

(*ii*) prior to the issue of that order, leaves Bengal or the Presidency area, as the case may be,

the Local Government may issue the order under section 6 in the absence of that person by publishing the same in the *Calcutta Gazette*, and such person shall be deemed to have absconded in order to evade that order:

Provided that the Local Government may condone a failure to attend under clause (*i*), on reasons for such non-attendance being furnished to their satisfaction, and in that case such person shall not be deemed to have absconded in order to evade the order.

(*Clauses 8—10.*)

Identification order.

8. Every person, in respect of whom an order has been made under section 5 shall, if so directed by the Commissioner of Police or the District Magistrate, as the case may be.— [Cf. Act III of 1911, 7(2).]

(*i*) present himself to be photographed ;

(*ii*) allow his finger impressions to be recorded ;

(*iii*) if literate, furnish such officer with specimens of his handwriting and signature ; and

(*iv*) attend at such times and places as the Commissioner of Police or the District Magistrate, as the case may be, may direct for all or any of the aforesaid purposes.

Penalty for breach of order under section 6.

9. When any person, against whom an order has been passed under section 6, fails to comply with such order within the time specified therein, or after complying with the said order returns to, or after evading the said order returns to or remains in, any place within Bengal or the Presidency area, as the case may be, before the expiry of the period stated in the order, or fails to give to the officer appointed to receive it the information in regard to residence or absence set forth in section 6, such person may be arrested without a warrant by a police-officer and shall be liable, on conviction before a Presidency Magistrate, or a Magistrate of the first class, to be punished with rigorous imprisonment for a term which may extend to one year. [Cf. Bom. Act IV of 1902, s. 27 (3).]

Penalty for breach of order under section 6.

10. (*1*) Any person who fails to comply with, or attempts to evade, any direction given in accordance with the provisions of section 8, or who absconds in order to evade any order made under section 6, shall be liable to be arrested without a warrant and shall, on conviction before a Presidency Magistrate, or a Magistrate of the first class, be liable to be punished with imprisonment for a term which may extend to six months, or to a fine which may extend to one thousand rupees, or to both.

(*2*) An offence under this section and under section 9 shall be deemed to be a non-bailable offence.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

No. 53L., dated Calcutta, the 6th January, 1923.—The following report of the Select Committee on the Amendment to the Standing Orders of the Bengal Legislative Council, 1920, is hereby published for general information :—

Report of the Select Committee appointed to consider the amendments to the Bengal Legislative Council, 1920, Standing Orders, suggested by Professor S. C. Mukherji and Shah Syed Emdadul Haq.

Present:

The Hon'ble Mr. H. E. A. Cotton, *President*.
Babu Surendra Nath Ray, *Deputy-President*.
Mr. R. H. Langford James.
Mr. A. Marr.
Dr. Hassan Suhrawardy.
Shah Syed Emdadul Haq.
Babu Indu Bhushan Dutta.
Professor S. C. Mukherji.
Mr. S. M. Bose.
Mr. Syed Erfan Ali.

We, the undersigned members of the Select Committee appointed to consider the amendments to the Standing Orders suggested by Professor S. C. Mukherji, M.L.C., and Shah Syed Emdadul Haq, M.L.C., have considered the same, and our recommendations in respect thereto are as follows:—

AMENDMENT OF STANDING ORDER 6(*1*) [SECTION 19(*1*)].

We consider that the amendment of Standing Order 6(*1*) [Section 19(*1*)] should run as follows:—

"At the end of Standing Order 6(*1*) [Section 19(*1*)] the following shall be added, *viz.*—

'except in the case of any resolution on which a member has indicated his first priority and which remains undisposed of at the end of a session. Such resolution shall, if the member who has given notice of it intimates in writing before the holding of the ballot for the next session his desire to proceed with it, be carried over to the next session and shall, together with any amendments thereto of which notice has been given, be set down for discussion for such day or days as are available for non-official business in the order in which it stands and shall be given precedence to the resolutions to be balloted for for that session. The order of priority as settled by the ballot is final.' "

One member of the Committee considered that it would be preferable to add some provision that certain "important" resolutions should be given some special preference in the rules. The remaining members of the Committee considered that with reference to resolutions the order of the ballot should be strictly adhered to, subject to the carrying over of first priority lapsed resolutions in the manner indicated in the main amendment under discussion.

AMENDMENT OF STANDING ORDER 7(*2*) [SECTION 20(*2*)].

"After the words 'from time to time' in Standing Order 7(*2*) [Section 20(*2*)] the following shall be added, viz.—

'except as provided in sub-section (*1*) of Standing Order 6.' "

The Committee unanimously accepted this amendment as being consequential to that agreed upon.

PROPOSED AMENDMENT OF STANDING ORDER 24(2) [SECTION 84].

The Committee then considered the amendment of Shah Syed Emdadul Haq in respect of the amount of time to be given to each speaker during the debate on a motion for adjournment of the Council to discuss a matter of urgent public importance. The suggested amendment ran as follows:—

"Amendment of Standing Order 24(2).—In sub-clause (2) of Standing Order 24, for the word 'fifteen' the word 'ten' shall be substituted."

After discussion the Committee unanimously decided that it was undesirable to interfere with the Standing Order as it is at present drafted, and Shah Syed Emdadul Haq asked for leave to withdraw his proposed amendment.

AMENDMENT OF STANDING ORDER 12 [SECTION 24].

The Committee then considered the amendment of Standing Order 12 [Section 24] and one member wanted further to amend the proposed amendment so as to provide that only questions which are allowed should be taken into account in computing the number of questions which a member is entitled to ask at the session. The remainder of the Committee were opposed to this view, as an arrangement of this kind would be impracticable to work, and the amendment was passed unanimously in the following form:—

"At the end of Standing Order 12 [Section 24] the following shall be added, viz.—

'provided also that no member shall, unless he has obtained the special permission of the President, be permitted to send in notice of more than twelve questions during one session of the Council, exclusive of any questions that may have been postponed for reply from a previous session.'"

AMENDMENT OF STANDING ORDER 63 [SECTION 70].

The Committee then considered the suggested amendment of Standing Order 63 [Section 70] and after discussion unanimously recommended that it be adopted in the following form:—

"After Standing Order 63 [Section 70], the following shall be added, viz.—

'provided also that no member shall, unless he has obtained the special permission of the President, be permitted to send in notice of more than three resolutions during one session of the Council, exclusive of any resolution carried over under the provisions of Standing Order 6.'"

H. E. A. COTTON.
SURENDRA NATH RAY.
R. H. LANGFORD JAMES.
A. MARR.
HASSAN SUHRAWARDY.
*SHAH SYED EMDADUL HAQ.
S. C. MUKHERJI.
*INDU BHUSHAN DUTTA.
S. M. BOSE.
SYED ERFAN ALI.

* These members signed subject to their Note of Dissent attached.

Note of Dissent by Babu Indu Bhushan Dutta.

I sign this report subject to the following note of dissent.

I am sorry I cannot agree to the amendment of Standing Order 6(*1*) [Section 19(*1*)], as carried out by the other members of the Select Committee.

From the facts supplied by the Secretary, it was evident that the number of "first priority" resolutions, which have lapsed during the last sessions of the Council, is not very large. Many of them could have been disposed of, if permission had been given to take up non-official business, when there was spare time on days previously fixed for official business, as had been the procedure during the first few sessions of the Council. A short extension of any particular session may easily help towards the disposal of all the "first priority" resolutions of that session.

It may often happen that, after the close of a session, some very important matter arouses a great deal of public interest: it may, therefore, be necessary for the legislature to express a definite recommendation on such matters. If the undisposed of "first priority" resolutions of a previous session are allowed to take precedence over all the resolutions of the next session, then, these important matters may not have a good chance of being discussed at all. In order to obviate this difficulty, some members of the Select Committee suggested that any important matter might be brought up by a motion of adjournment of the Council. I am afraid that this process is a very difficult one and cannot be usually resorted to. Moreover, as an adjournment motion is usually talked out, no definite recommendation of the Council can be ascertained. In an adjournment debate, only a small number of members get a chance of speaking, and as no votes are usually taken, the silent members have no opportunity of recording their opinion.

As regards the order of priority being regarded as absolutely final, I do not see any necessity of reiterating it in this amendment. The priority, as settled by the ballot, is, as a general rule, final, but there may be exceptions. If any member wishes to forego his right of priority in favour of another member, and if the Hon'ble Member or Minister in charge of the resolution has no objection, I do not see why the order of priority, as settled by the ballot, should not be allowed to be changed.

For the above reasons, I think that the standing order 6(*1*) should stand as it is at present, without any amendment.

Note of Dissent by Shah Syed Emdadul Haq.

From the concluding portion of page 2, *i.e.*, from "Amendment of Standing Order 12 [Section 24]. . . . ." to the last, I dissented wholly from the number of questions and resolutions being limited; but since the majority are in favour of (such) limitation, it is necessary that there should be a rule that not more than this fixed number of 12 valid questions and three valid resolutions at the least shall be admitted. As objection regarding this will not prove effective, I express my strong dissent from the present proposal against notices of more than 12 questions and three resolutions being allowed to be sent in. I propose that not more than 12 questions and three resolutions shall be accepted. For, on many occasions, numerous questions and resolutions are rejected. It may be objected that it is in order to reduce work that this rule is being framed; if the rule about valid questions and resolutions is made, work will be increased by a member sending in repeatedly too many questions and resolutions. But careful consideration will easily show that if the first 12 questions and three resolutions are accepted as valid, no matter how many questions and resolutions in excess he may send in, there would be no need to pay any attention to them. If by chance, two or three are rejected, only then will it do, if two or three resolutions and questions left over and following the 12 questions and three resolutions, are treated as valid. In spite of the fact that there is no such rule of limitation in the Council of State, the Legislative Assembly, and other Provincial Legislative Councils, this principle is being applied to the comparatively advanced Bengal Council. In these circumstances, it would be a narrow policy to deprive the members of the opportunity of sending in 12 valid questions and three valid resolutions; it is not proper to expect increase of work (in consequence). Examples may be adduced of resolutions, after acceptance and inclusion in the agenda paper after ballot, being disallowed and expunged by Government. As regards questions also, almost more serious difficulties than this exist. Very many questions are disallowed, though framed with the utmost care. Very often questions are disallowed on the ground that it is not within the jurisdiction of this Government or department or Member or Minister, or some such other ground. The Assam-Bengal Railway is under the control of the Bengal Government. For this reason answers to questions (relating to it) are available. But questions relating to the police (of this railway) are disallowed on the ground that this department is subject to the Assam Government. Far from the member knowing of such things, it is doubtful if even the Secretary of the department could at first realize it. This can be shown by the report of the correspondence on this subject. The question about Jagabandhu Das has been disallowed in Council because it relates to a matter subject to the High Court, but the High Court has written to say that it is a matter under the control of Government. There are many examples like this to adduce. Very often the fact of disallowance of questions and resolutions in Council is communicated at a time when there is no time left again to notify questions for the same session.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, JANUARY 24, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 261L., dated Calcutta, the 20th January, 1923.—With reference to the foot-notes to the Report of the Select Committee on the Calcutta Municipal Bill, 1921 (A Bill to amend and consolidate the law relating to the Municipal Affairs of the Town and Suburbs of Calcutta) published in the *Calcutta Gazette*, Extraordinary, dated the 19th January, 1923, and in continuation of this office Notification No. 173-L., dated the 15th January, 1923, it is notified that Maulvi A. K. Fazl-ul Haq, M.L.C., Babu Surendra Nath Mallik, M.L.C. and Mr. G. Morgan, M.L.C., have appended the following notes of Dissent to the report:—

THE CALCUTTA MUNICIPAL BILL, 1921.

Note of Dissent by Maulvi A. K. Fazl-ul-Huq, M.L.C.

I am opposed to the inclusion of the suburban municipalities within the jurisdiction of the Calcutta Corporation, both because such an inclusion is opposed to the weight of public opinion and also because it will be harmful to Muhammadan interests. In most of these suburban municipalities, at present, Muhammadan influence is predominant. I am afraid all this influence will be lost if these municipalities are merged in the Calcutta Corporation. The safeguard of communal representation that has been provided in the Act will not be sufficient to compensate the Muhammadan community for the loss of influence and power which will follow the absorption of the suburban municipalities in the higher body.

As regards Muhammadan representation, I am of opinion that the number of seats to be ear-marked for Muhammadans should be at least 25 per cent of the total number.

With these remarks, I sign the report.

Note of Dissent by Babu Surendra Nath Mallik, M.L.C., and Mr. G. Morgan, M.L.C.

The Select Committee, while recommending the amalgamation of Maniktala, the Port Commissioners' new dock area and a small portion of the Tollygunge Municipality with Calcutta have negatived by a very narrow majority the proposal to include Cossipore-Chitpore. We are strongly of opinion that this area should also be included.

2. Cossipore-Chitpore is virtually an integral part of Calcutta and the present boundary between it and the city is purely artificial. The portion between the river and Barrackpore Trunk Road is practically a trading and commercial centre of Calcutta, and is geographically only an elongation of the city. The bulk of the people of Cossipore-Chitpore are in close and daily contact with the city and practically form a part of the city population. There is an acute shortage of housing accommodation in Calcutta where the land values are extraordinarily high. It is urgently necessary to find room for expansion both for residential and commercial purposes. The population of Calcutta is massed in the north where the density is 160 per acre (*i.e.* about the same as in the slum areas of London) and there is a natural tendency for the population to move towards Cossipore-Chitpore and Maniktala instead of to Bhowanipur or Ballygunge. We may note in this connection that a large area of nearly three square miles on the south of the city, from Tollygunge to Behala, has been acquired by the Port Commissioners for a marshalling yard and has been lost to the city. Not only is the natural flow of population towards the north, but that is the only direction in which there is room for expansion. The case for the amalgamation of Cossipore-Chitpore and Maniktala is based on the unquestionable necessity of finding room for the expansion of Calcutta, and it is inconceivable how the Cossipore-Chitpore municipal area can be left out of the scheme. People are spreading to Cossipore-Chitpore and are developing land with inadequate means of access, and the evils of the worst parts of Calcutta will before long be reproduced here, unless effective measures are taken to check them. The portion of Cossipore-Chitpore south of Dum Dum Road and Shell Factory Road is a large industrial centre which requires a high standard of municipal administration and efficient inspection and control. If Cossipore-Chitpore is included in Calcutta, the Corporation will be able to control building operations and to regulate future development and to exercise their extensive powers in the interests of sanitation and public health. Moreover, the Corporation pumping station and reservoir, from which the whole city is supplied with filtered water, are situated at Talla, which forms a part of the Cossipore-Chitpore municipal area. The Corporation are considerably expanding the water-works and we agree that for this reason, if for no other, this area should be under their control.

3. Another argument for incorporating Cossipore-Chitpore in Calcutta is the extent of its dependence on the city for some of its essential municipal amenities. The whole of its filtered water supply is obtained from the Corporation on payment, and it also takes a supply of unfiltered water from Calcutta. There is no adequate supply of unfiltered water for fire extinguishing purposes, and although, owing to the large number of jute warehouses situated there, the fire-risks are particularly heavy and the provision of an adequate supply of water is urgently necessary and has been repeatedly pressed by the Chief Officer of the Fire Brigade, no satisfactory arrangements have yet been made. Gas lighting in Cossipore-Chitpore is possible only because of the arrangements made in Calcutta, and it is only as an extension of the city system that any development of tramways in Cossipore-Chitpore can be hoped for. The present city of Calcutta and the municipalities of Cossipore-Chitpore and Maniktala form really one organic whole, and it is only by approaching from the standpoint of this organic unity the difficult problems of sanitation, drainage, water-supply, housing accommodation and communications, all of which will require expert knowledge and control, which only a central authority can provide, that the present wants of the large aggregation of population in these areas can be satisfied and their future interests safeguarded.

4. The Committee appointed by Government to consider the question of amalgamation turned down the proposal, mainly on the ground that the financial position of the municipality is one of considerable strength, that a

drainage scheme is under preparation, and with its rapidly growing income it is not improbable that the municipality will be able to carry out this scheme within the next few years, and that in view of the present financial position of the Corporation and the burden which will be thrown on them by the amalgamation of Manicktala, it is doubtful whether they will find it possible to carry out any scheme of improvement in Cossipore-Chitpore within the next few years. We desire to point out that it is a far cry between the preparation of a scheme of drainage and its actual execution, and the mere fact of the Cossipore-Chitpore Municipality having a drainage scheme under preparation affords very little ground for satisfaction or hope. A very rough estimate prepared by the Corporation engineers places the estimate for draining two-thirds of Cossipore-Chitpore at Rs. 36 lakhs, including half the cost of a combined outfall for both Maniktala and Cossipore-Chitpore. The arrangements in connection with the water-supply are estimated to cost about Rs. 15 lakhs for the two municipalities; it may be taken at half this figure for Cossipore-Chitpore. These two schemes alone will entail a capital outlay of half a crore, which will in turn will involve an annual recurring expenditure of 4½ lakhs in interest and sinking fund charges. The total income of Cossipore-Chitpore in 1921-22, exclusive of the opening balance of about Rs. 1¾ lakhs and certain special receipts, was Rs. 5,42,000, and even making every allowance for future growth of income, we are convinced that the municipality will not be in a position to undertake this capital outlay. As to the position of the Corporation, whatever difficulty there may be is only temporary, owing to their having on hand a large scheme for improving the water-supply; but we understand that this scheme will cost considerably less than the original estimates, by reason of the Corporation having let certain contracts at very favourable rates, and the saving effected will provide the outlay required for Cossipore-Chitpore. Further, the revenues of the Corporation are rapidly expanding, and they have an ample margin of borrowing power with which they can easily finance the loans required for improving Cossipore-Chitpore.

5. Another argument which is urged against amalgamation is that, with all the drawbacks in Cossipore-Chitpore, the death rate there is lower than is Calcutta. In our opinion the comparison is altogether fallacious, as owing to the special facilities available in Calcutta, people from all parts of Bengal come to the city for treatment and help to swell the vital statistics. A detailed analysis of the vital statistics of Calcutta to refute the above argument would be out of place here, and we would therefore only point out that in a big industrial and railway centre like Calcutta there are special factors which affect the mortality rates and which are quite unconnected with the general sanitary condition of the town. Further, a large part of the population of Cossipore-Chitpore consists of mill hands and labourers, who generally leave the place and go to their villages up-country when they get sick or become old and unfit for work. It would therefore be altogether wrong to deduce from the lower death rate of Cossipore-Chitpore that it is healthier than Calcutta, a conclusion which is contrary to actual facts and to almost universal testimony.

6. We are convinced that it would be a short-sighted policy to leave out Cossipore-Chitpore which, as in the case of the Added Area 34 years ago, is bound to be included, in its own interest, in Calcutta at no distant date. The only result of its exclusion now will be that when it comes to be taken over a considerably larger amount of expenditure will have to be incurred by the Corporation to undo the mischief that will be done in the interval. The only way to avoid this unnecessary waste of money, and to keep the cost of improvements within reasonable limits is to amalgamate it now with the Corporation.

We recommend therefore that Cossipore-Chitpore should also be included in Calcutta, subject, as in the case of Maniktala, to a statutory limit of expenditure on improvements. The area may be divided into three wards and be allotted 5 seats (*i.e.*, 3 general and 2 Muhammadan seats) as recommended by the Corporation, the total number of Councillors and Aldermen constituting the Corporation being correspondingly increased.

C. TINDALL,

Secretary to the Government of Bengal
and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, JANUARY 31, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 300L., dated Calcutta, the 29th January, 1923.—His Excellency the Governor having pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bills, together with the Statements of Objects and Reasons which accompany them, in the *Calcutta Gazette*, the Bills and the Statements of Objects and Reasons are accordingly hereby published for general information.

It is proposed to introduce the Bills at the session of the Council continuing on the 8th and 9th February, 1923.

THE UNIVERSITY OF CALCUTTA AMENDMENT BILL, 1923.

A

BILL

to amend the law relating to the University of Calcutta.

WHEREAS the University of Calcutta was established and incorporated by Act II of 1875;

And whereas by Act VIII of 1904 certain alterations were made in the constitution of the said University;

Whereas it is expedient to amend the law relating to the University of Calcutta;

And whereas the previous sanction of the Governor General has been obtained under sub-section (*3*) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the University of Calcutta Amendment Act, 1923; and

(*2*) It shall come into force on such date as the Government of Bengal may fix in this behalf by notification in the *Calcutta Gazette*.

Act to be part of other Acts relating to the Calcutta University.

2. This Act shall be deemed to be part of the Acts by which the University of Calcutta was established and incorporated or by which the constitution thereof was altered.

Amendment of section 4 of Act VIII of 1904.

3. (*1*) In sub-section (*1*) of section 4 of the Universities Act, 1904, after the words "the Chancellor" the brackets, letter and words "(*b*) The Rector (The Minister of Education for the time being ex-officio Rector.)" shall be inserted.

(*2*) For clause (*e*) of sub-section (*1*) of section 4 of the same Act the following shall be substituted, namely:—

(*e*) "the Ordinary Fellows—

(*i*) elected by registered graduates,

(*ii*) elected by professors, lecturers and teachers of affiliated colleges,

(*iii*) elected by Principals of Colleges affiliated for conferment of degrees,

(*iv*) elected by University professors, lecturers and teachers,

(*v*) elected by the governing bodies of colleges,

(*vi*) elected by the Bengal Legislative Council,

(*vii*) nominated by the Government of Bengal,

(*Clauses 4, 5.*)

(*viii*) nominated by the Bengal Chamber of Commerce, and

(*ix*) nominated by the Bengal National Chamber of Commerce."

Amendment of section 6 of Act VIII of 1904.

4. For sub-section (*1*) of section 6 of the same Act, the following shall be substituted, namely :—

"(*1*) In case of the University of Calcutta the number of Ordinary Fellows shall not be less than one hundred and thirty nor exceed one hundred and fifty, and of such number—

(*a*) eighteen (of whom at least six shall be Muhammadans) shall be elected by the registered graduates other than graduates in law, medicine and engineering,

(*b*) twelve (of whom at least four shall be Muhammadans) shall be elected by registered graduates in law,

(*c*) ten (of whom two at least shall be Muhammadans) shall be elected by registered graduates in medicine,

(*d*) four shall be elected by registered graduates in engineering,

(*e*) twenty-five (of whom at least four shall be Muhammadans) shall be elected by the professors, teachers and lecturers of affiliated colleges,

(*f*) six shall be elected by the Principals of Colleges affiliated for teaching up to the degree standards from among themselves,

(*g*) five (of whom one at least shall be a Muhammadan) shall be elected from the governing bodies of affiliated colleges,

(*h*) ten (of whom two at least shall be Muhammadans) by the University Professors, lecturers and teachers,

(*i*) ten (of whom at least three shall be Muhammadans) shall be elected by the members of the Bengal Legislative Council,

(*j*) two shall be nominated by the Bengal Chamber of Commerce, and

(*k*) two shall be nominated by the Bengal National Chamber of Commerce."

Amendment of section 7 of Act VIII of 1904.

5. In section 7 of the same Act—

(*i*) In sub-section (*2*) for that portion of the sub-section commencing with the words and brackets "(*b*) has graduated" to the end of that sub-section the following shall be substituted, namely :—

(*b*) "has graduated in any faculty not less than seven years before registration," and shall, subject to the payment of an initial fee of two rupees, be entitled to have his name entered in the register.

(*Clauses 6, 7.*)

(*ii*) for sub-section (*3*) the following shall be substituted, namely:—

"(*3*) the name of any graduate entered on the register shall, subject to the payment of an annual fee of two rupees, be retained thereon; and in case of default shall be removed therefrom but shall at any time be re-entered upon payment of all arrears:

Provided that a graduate whose name has already been entered on the register may at any time compound for all subsequent payments of the annual fee by paying fifty rupees."

(*iii*) The following shall be added at the end of sub-section (*4*), namely:—

"and no person shall be qualified to vote for or be elected from more than one of the bodies mentioned in sub-section (*1*) of section 6."

Repeal of sections 8 and 9 of Act VIII of 1904.

6. Sections 8 and 9 of the same Act are hereby repealed.

Insertion of new section 30 in Act VIII of 1904.

7. After section 29 of the same Act, the following shall be inserted, namely:—

New regulations.

"30. All regulations of the University of Calcutta now in force shall cease to be operative on the 31st day of March 1924; the Senate shall frame new regulations before the 31st day of December 1923; in default of the Senate so framing the regulations the same shall be framed by the Government of Bengal."

STATEMENT OF OBJECTS AND REASONS.

The Bengal Legislative Council passed a Resolution in 1921 for rendering the constitution of the University of Calcutta more popular and for introducing a large elective element in the governing body. This Bill is intended to give effect to the desire embodied in the above Resolution.

JATINDRA NATH BASU,

Member-in-charge.

THE CALCUTTA UNIVERSITY BILL, 1923.

A

BILL

further to amend the Calcutta University Act, 1857, and the Indian Universities Act, 1904.

Preamble. WHEREAS it is expedient further to amend the Calcutta University Act, 1857, and the Indian Universities Act, 1904, so far as the Calcutta University is concerned with a view to obtain a wider constitution for that University and to provide for an improvement in the financial administration of that University;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act:

It is hereby enacted as follows:—

Short title. **1.** This Act may be called the Calcutta University Act, 1923.

Amendment of section 8 of Act II of 1857. **2.** In section 8 of the Calcutta University Act, 1857, after the word "Chancellor" in the two places where it occurs, the words "Rector who shall be the Hon'ble Minister in charge of Education for the time being" shall be inserted.

Amendment of section 15 of Act II of 1857. **3.** In section 15 of the Calcutta University Act, 1857, for the words "such fees" the words "all fees paid to the University and all income of the University subject to any trust" shall be substituted.

Insertion of new section 15A. **4.** After section 15 of the Calcutta University Act, 1857, the following shall be inserted, namely:—

"15A. (*1*) There shall be appointed a Statutory Board of Accounts consisting of nine members, of whom three shall be nominated by the Local Government, three shall be elected by the University and three shall be elected by the Bengal Legislative Council.

Statutory Board of Accounts.

(*2*) The functions of the said Board shall be—

(*a*) to appoint with the approval of the Local Government a treasurer to the University as well as his staff. The said treasurer shall be in charge of all monies belonging to the University and shall have the power to draw money on behalf of the University from Banks by means of cheques;

(*b*) to see that no money is paid which is not provided for in the budget;

(*c*) to compare once in every three months the actuals of the receipts and disbursements with those respectively

(*Clause 5.*)

provided for in the budget on that behalf and to report the result of such comparisons to the Local Government and the Senate;

(*d*) to prepare the draft budget at least three months before the beginning of the sessions in each year; and

(*e*) to exercise such other powers and duties as may be given to the Board by the Regulations framed under the Acts in force."

Amendment of section 4 of Act VIII of 1904.

5. (*1*) In sub-section (*1*) of section 4 of the Indian Universities Act, 1904, after the brackets, letter and words "(*a*) the Chancellor," the brackets, letter and words "(*b*) in the case of the University of Calcutta, the Rector" shall be inserted.

(*2*) In sub-section (*1*) of the same section after clause (*e*) the following shall be inserted, namely:—

" or in the case of the University of Calcutta, the Ordinary Fellows—

(*i*) elected by the registered graduates at least thirty in number in such proportion for representing the various professions as may be determined by the Regulations framed under the Act,

(*ii*) elected by the members of the Bengal Legislative Council, not necessarily from among themselves, at least twelve in number,

(*iii*) elected by the teachers and professors of affiliated colleges, at least twenty-five in number,

(*iv*) elected by the teachers and professors of colleges maintained by the University, at least ten in number, and

(*v*) nominated by the Government at least thirty-three in number of whom at least eleven are to be Muhammadans.

Such elections are to be held according to the Regulations that may be hereafter framed in that behalf under the Acts for the time being in force:

Provided that so far as the first election after this Act comes into force, is concerned, the same shall be held under rules to be framed by the Government for holding the said election which the Local Government is hereby authorised to frame.

Provided also that the Government, however, shall have the power to raise the total number of Ordinary Fellows to one hundred and fifty as the maximum but in doing the same they shall maintain the proportion stated above as far as the same may be practicable."

(*Clauses 6-9.*)

Insertion of new section 4A.

6. After section 4 of the Indian Universities Act, 1904, the following shall be inserted, namely:—

"4A. The Ordinary Fellows of the University of Calcutta shall vacate their seats within six months of the commencement of the Calcutta University Act, 1923, unless they are again elected or nominated under the said Act."

Vacation of seats by existing Fellows.

Amendment of section 6.

7. In sub-section (*1*) of section 6 of the Indian Universities Act, 1904, the words "of Calcutta" shall be omitted.

Amendment of section 25

8. After section 25 of the Indian Universities Act, 1904, the following be added, namely:—

"(3) The Government may after consulting the Senate modify the existing regulations or make new regulations consistent with the provisions of the Act of Incorporation as amended by the previous Acts and with this Act, to provide for all matters relating to the University of Calcutta other than those that are purely academic."

Insertion of new section 26A.

9. After section 26 of the Indian Universities Act, 1904, the following shall be inserted, namely:—

"26A. (*1*) Notwithstanding anything contained in section 26, in the case of University of Calcutta, within three months after the commencement of the Calcutta University Act, 1923, or within such further period as the Government may fix in this behalf,—

Revised regulations.

(*a*) the Senate as constituted under that Act shall cause a revised body of regulations to be prepared and submitted for the sanction of the Local Government;

(*b*) this Government may sanction the proposed body of regulations or, if any additions to, or alterations in, the draft submitted appear to them to be necessary, the Government, after consulting the Senate, may sanction the proposed body of regulations with such additions and alterations as appear to the Government to be necessary.

(*2*) Where a draft body of regulations is not submitted by the Senate within the period of three months after the commencement of the Calcutta University Act, 1923, or within such further period as may be fixed under sub-section (*1*), the Government may, within three months after the expiry of such period or of such further period, make regulations which shall have the same force as if they had been prepared and sanctioned under sub-section (*1*)."

STATEMENT OF OBJECTS AND REASONS.

It appears from the Report of the Accountant-General (*vide* page 173 of Appendix No. 30 to the Report of the Government Grant Committee appointed by the Senate) that the deficit of the Calcutta University amounted to Rs. 38,000 in 1918-19, Rs. 1,77,000 in 1919-20 and Rs. 2,08,000 in 1920-21. The Report further says at page 171: "It may be noted here that the credit balance of Rs. 76,654 in favour of the post-graduate teaching fund, is the result of book adjustments whereby funds have been transferred from the fee fund to the post-graduate teaching fee fund, when there was no balance available from the fee fund. Ordinarily the fee fund should not show a debit balance, as transfers from that fund to other funds can only be permitted to the extent of the surplus available. The book adjustments that have been made in the accounts have the effect of giving an erroneous impression of the financial position of the two funds." This discloses a state of things regarding the administration of the University finances which can very well be characterized as lamentable. Then again, at any rate for the last few years, the University though a public body, totally disregarded the extremely salutary practice of preparing the annual Budget. The said Report of the Accountant-General says (at page 180)—"In the case of all public bodies, such as Calcutta Corporation, Calcutta Port Trust, Calcutta Improvement Trust, it is the invariable standing practice to prepare a complete estimate of all classes of receipts and expenditure on different accounts and get it duly sanctioned by proper authority before the year, to which it appertains, commences. The authorities entrusted with the expenditure know fully well beforehand what grants are placed at their disposal, and regulate their expenditure accordingly. They also closely watch the receipts and advise their superiors to take early action if there is a falling off in them. The Calcutta University on the other hand allows the expenditure to go on for months against no grant sanctioned by the Senate, and does not prepare an estimate till the year sufficiently advances. Estimate for 1919-20 was passed by the Senate on 29th November 1919, 1920-21 on 4th December 1920 and 1921-22 on 4th March 1922. Thus the expenditure up to those dates was incurred without any sanctioned grant." These and various other serious defects in the administration of the financial affairs of the University appear in the said Report of the Accountant-General. One of the objects of this Bill is to improve the financial administration of the Calcutta University.

The other object of this Bill is to introduce more of the elective element in the constitution of the Senate with due and proper regard to academic interests.

Some of the other amendments proposed in this Bill are more or less consequential.

Provision has been made to empower the Local Government to frame rules according to which only the first elections after this Act comes into force, have got to be held.

SURENDRA NATH MALLICK,
Member-in-charge.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, FEBRUARY 7, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 371L., dated the 2nd February, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 25th January, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto:—

THE BENGAL VILLAGE-CHAUKIDARI (AMENDMENT) BILL, 1923.

A

BILL

further to amend the Village-chaukidari Act, 1870.

WHEREAS it is expedient further to amend the Village-chaukidari Act, 1870, in the manner hereinafter appearing: Ben. Act VI of 1870.

It is hereby enacted as follows:—

Short title. **1.** This Act may be called the Bengal Village-chaukidari (Amendment) Act, 1923.

New section substituted for section 11 of Bengal Act VI of 1870.

2. For section 11 of the Village-chaukidari Act, 1870, the following shall be substituted, namely:—

Number of chaukidars.

"11. The *panchayet* of a village shall determine the number of chaukidars to be appointed for that village, subject to the approval of the District Magistrate.

Notwithstanding anything contained in this section, the number of chaukidars, employed on the day on which the Bengal Village-chaukidari (Amendment) Act, 1923, comes into operation, shall continue to be the same until altered under the provisions of this section."

STATEMENT OF OBJECTS AND REASONS.

As section 12 of the Village-chaukidari Act has been amended by this Council, removing the maximum limit of the pay of the chaukidars, and vesting the panchayet with the right of determining the salary of the chaukidars, subject to the approval of the District Magistrate, it is necessarily desirable that the panchayet should also have the right of determining the number of chaukidars to be appointed. The object of this Bill is, therefore, to effect an amendment of section 11 of the Chaukidari Act on the same lines as that of section 12, which was carried out in the August session of the Legislative Council.

INDU BHUSAN DUTT,

Member-in-charge.

CALCUTTA;

The 22nd December, 1922.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 372 L., dated the 2nd February, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 25th January, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE BENGAL VILLAGE SELF-GOVERNMENT (AMENDMENT) BILL, 1923.

A

BILL

to amend the Bengal Village Self-Government Act, 1919.

WHEREAS it is expedient to amend the Bengal Village Self-Government Act, 1919, in the manner hereinafter appearing ; Ben. Act V of 1919.

It is hereby enacted as follows :—

Short title. **1.** This Act may be called the Bengal Village Self-Government (Amendment) Act, 1923.

Amendment of section 6. **2.** In sub-sections (*3*) and (*4*) of section 6 of the Bengal Village Self-Government Act, 1919, hereinafter referred to as " the said Act " for the words " District Magistrate " the words " Chairman of the District Board in consultation with the District Magistrate, or some person authorised by him " shall be substituted.

Amendment of section 16. **3.** In section 16 of the said Act.—

(*1*) at the end of clause (*iii*) of sub-section (*1*), the following shall be added, namely :—

" Provided that before the President is removed from office he shall be given an opportunity to explain the charges preferred against him :

Provided also that an appeal shall lie to the Commissioner of the Division against the order of removal within one month from the date of such order, the order of the Commissioner shall be final.

(*2*) in sub-section (*2*)—

(*a*) for the words " union board " in the first line of the sub-section, the words " Local Board or, if there is no Local Board, the District Board " shall be substituted,

(*b*) after the words " the members of " for the word " the " the words " a union " shall be substituted,

(*c*) for the words " its Vice-President " the words " the Vice-President of such union board " shall be substituted.

(*Clauses 4—9.*)

(*3*) at the end of sub-section (*2*), the following shall be added, namely :—

"Provided that before the Vice-President is removed from office he shall be given an opportunity to explain the charges preferred against him."

Amendment of section 21.

4. At the end of sub-section (*1*) of section 21 of the said Act for the words "from time to time by the district magistrate after consideration of the views of the union board" the words "from time to time by the union board subject to the approval of the District Magistrate" shall be substituted.

Amendment of section 27.

5. In clause (*a*) (*v*) of sub-section (*1*) of section 27 of the said Act, after the words "or jungle" in the two places where they occur, the words "or water-hyacinth" shall be inserted.

Amendment of section 32.

6. In section 32 of the said Act, after the words "establish primary schools or dispensaries," the words "or engage medical practitioners, with a supply of medicines, or keep any medicine for distribution" shall be inserted.

Amendment of section 36.

7. Section 36 of the said Act shall be re-numbered as section 36, sub-section (*1*), and after that sub-section, as re-numbered, the following shall be added, namely :—

"(*2*) The union board may remove any officer or servant with the approval of the Local Board or, in the absence of such approval, with the approval of the District Board, and such officer or servant shall have a right of appeal to the District Board within a month from the order of removal. The decision of the District Board shall be final."

Amendment of section 37.

8. At the beginning of section 37 of the said Act, after the words "within the union," the words "and on the owners of any estate or tenure or part or share thereof any portion of the lands of which are within the union" shall be inserted.

Amendment of section 38.

9. In section 38 of the said Act,—

(*a*) after the proviso to sub-section (*1*), the following shall be added, namely :—

"Provided also that the amount to be assessed on a person, who is assessed under section 37 in respect of more than one union, shall be as follows :—

(*i*) if the amount assessed under the foregoing provisions of this section would exceed rupees forty-two in respect of each of two or in respect of each of three unions ;

Rupees forty-two for each union.

(Clauses 10—14.)

(ii) if the amount assessed under the foregoing provisions of this section would exceed rupees thirty-two in respect of four or more unions ;

Rupees thirty-two for each union.

(b) after the words "a month" in sub-section (2) the words "or who possesses less than one and one-fourth acre of land" be inserted.

Amendment of section 40.

10. In section 40 of the said Act,—

(a) after the words "district magistrate," the words "or the Chairman of the District Board" shall be inserted,

(b) after the word "necessary," the words "and after considering the report of the union board" shall be inserted.

Amendment of section 45.

11. In section 45—

(a) the following sub-section shall be inserted as sub-section (1):—

"(1) The District Board shall make over to each union board one-fifth of the amount of road cess collected from the union, and this amount shall be expended by such union board on the improvement of sanitation, irrigation, or education or for purposes of public health with the union,"

(b) the present section 45 shall be re-numbered as sub-section (2) of that section, and

(c) after the words "the district board may" in sub-section (2), as re-numbered, the word "also" shall be inserted.

Amendment of section 58.

12. In section 58 of the said Act, after the words "body of persons," the words "or to any individual" shall be inserted.

Insertion of new section 59A.

13. After section 59 the following shall be inserted, namely :—

"59A. An appeal shall lie to the Minister-in-charge of the Department of Local Self-Government against any order of the Commissioner passed under sub-section (1) of section 56 and under section 59. Such appeal shall be filed within sixty days of the receipt of such order by the union board and the decision of the Minister thereon shall be final."

Amendment of Schedule III.

14. In the second column of item 1 in Schedule III to the said Act the words "or circle officer" shall be omitted.

STATEMENT OF OBJECTS AND REASONS.

It seems desirable that the amendments in the Bengal Village Self-Government Act, 1919, proposed in the Bill should be made as soon as possible.

Clauses 2 and 10.—It is most desirable to be Chairman, District Board, with the consultation of District Magistrate or a person authorised in place of District Magistrate in section 6 of the Act.

This has been provided for in clause 2 of the Bill, and also the Chairman, District Board, will be more better than the District Magistrate about the power which is written in section 40 of the Act, and clause 10 of the Bill contains also a small amendment of section 40 of the Act providing that before the District Magistrate passes orders under that section he should consider the report of the union board.

Clause 3.—It is desirable that an opportunity should be given to the President or the Vice-President of a union board who is removed from office under section 16 of the Act and it is necessary to give beforehand an opportunity to explain the charges preferred against him and to meet any charges that may have been brought against President that he should have a right of appeal and that the Local Board and if the Local Board be dissolved in future, then District Board should have the power to remove a Vice-President instead of the union board. This has been provided for in clause 3 of the Bill.

Clause 4.—In dealing with matters under section 21 of the Act, the power of union board should be increased more. An advanced provision has been made for the Bengal Village-Chaukidari (Amendment) Act, 1922. Such provision should be made for this more advanced Act as Chaukidari Act.

Clause 5.—It is considered that section 27 should include the removal of the plague of the water-hyacinth, and that this should be specifically mentioned in the Act.

Clause 6.—An amendment of section 32 has been suggested in order to provide for the engagement of the services of medical practitioners, by union board. This seems very desirable.

Clause 7.—Provides for the removal of officers and servants by union boards and gives such officers and servants the right of appeal to the District Board.

Clause 8.—If there is no holding in the union but there is estate or portion of the lands, this can be assessed according to the income derived therefrom. This kind of amendment has been added in section 37 of the Act. This has been provided for in clause 8 of the Bill.

Clause 9.—Provision has been made that a person who has lands in two or three unions his assessment should not exceed rupees 42 for each union and whose lands in four or more unions his assessment should not exceed rupees 32 for each union, and the insertion of the words "who possesses less than one and one-fourth acre of land" in sub-section *(2)* of section 38 is most desirable.

Clause 11.—Provision has been made that one-fifth of the road cess collected from each union shall be made over to the union board for works of sanitation, irrigation or education or improvement of public health.

Clause 12.—The intention of the small verbal amendment in section 58 of the Act is to make the meaning of that section more clear.

Clause 13.—This clause provides an appeal against an order by the Commissioner under section 56 or 59.

SHAH SYED EMDADUL HAQ,
Member-in-charge.

CALCUTTA;
The 1st January, 1923.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

REVENUE DEPARTMENT.

LAND REVENUE.

CALCUTTA, THE 3RD FEBRUARY 1923.

RESOLUTION—No. 1095L.R.

IN paragraph 14 of the report of the Committee appointed to consider the amendment of the Bengal Tenancy Act, they dealt with the law relating to *utbandi* tenancies in the following words :—

"We appointed a sub-committee to enquire into the question of modifying the law relating to *utbandi* tenancies, and we agree generally with the proposals which they have made for the purpose of enabling such tenancies to be converted into ordinary raiyati holdings. The *utbandi* problem, however, is a local one affecting portions of a few districts only and having little connection with the main principles underlying the general amendment Bill. We think that it will be more convenient to deal with this matter by separate legislation, and we have therefore inserted no provision relating to it in this Bill."

The proposal therefore of the Committee is simply separate legislation dealing with the *utbandi* problem, such legislation to be for the purpose of enabling *utbandi* tenancies to be converted into ordinary raiyati holdings. A Bill has accordingly been drafted on the proposed lines with some modifications, and it is now published as annexure hereto for information and criticism, together with a statement of objects and reasons and notes on the different clauses.

2. It will be observed that the Committee's recommendation is limited to legislation for the purpose of enabling *utbandi* tenancies to be converted into ordinary raiyati holdings. It does not deal with the status or incidents of *utbandi* tenancies. Except in respect of certain minor points to which a reference will be made later, the sub-committee also made no recommendations disturbing either the status or incidents of the tenancy as given in section 180 of the Bengal Tenancy Act. In these respects the draft Bill leaves the Bengal Tenancy Act intact. The question of *utbandi* has been a vexed one ever since the Bengal Tenancy Act was passed in 1885 by the Government of India containing provision for the separate treatment of such lands. At that time the Lieutenant-Governor of Bengal opposed the insertion of special legislative measures towards the conservation of the *utbandi* tenancy in the Act; and a body of opinion exists opposed to the retention of such measures. On the other hand, another proposal has been made to the Government which will have the effect of strengthening such measures for the conservation of the tenancy. This proposal is that the present law regarding the status and incidents of the *utbandi* tenancy should be amplified and that a definition of *utbandi* and the incidents of the tenancy should be categorically stated in the proposed legislation. In the opinion of the Governor in Council it must therefore now be decided, if legislation is undertaken, which of the following three alternatives should be adopted :—

(*i*) to define *utbandi* and its legal incidents in greater particular in the Act and thus conserve certain definite privileges attaching to the tenancy in the Act, or

(*ii*) to eliminate any special privileges attaching to the *utbandi* tenancy from the Act, or

(*iii*) to leave the Act practically alone in this respect.

Whichever alternative is adopted, an Act on the lines now proposed, with necessary modifications, would probably be necessary for the conversion of

utbandi rents into ordinary rents, for Government are advised that *utbandi* rents can in any case remain legal, however the status and other incidents of the tenancy are treated. This distinction between the rent of an *utbandi* tenancy and its other incidents is of considerable importance and has not always been sufficiently appreciated.

3. The following particular proposals have been made to Government for insertion in the law in respect of the definition and incidents of the *utbandi* tenancy :—

(1) *Utbandi* is a kind of fluctuating tenancy in which the area of the tenancy as well as the rent payable for it varies from year to year according to the quantity of land actually cultivated and the crops grown in that year.

(2) An *utbandi* tenant may be either—

(*i*) a tenant with occupancy right, or

(*ii*) a tenant without occupancy right.

(3) An *utbandi* tenant shall not acquire occupancy right in respect of any land until he has cultivated it for twelve continuous years.

(4) When an *utbandi* tenant has acquired an occupancy right in any land in accordance with the above, he shall be deemed to be a raiyat with occupancy right in respect of the same, and all the provisions of Chapter V of the Bengal Tenancy Act shall thereafter apply, provided that until an order is passed under the Bill which is now published for criticism, determining a uniform annual rent, the average of the rent which was payable during the six years immediately preceding or any shorter period for which evidence may be available, shall be considered as the rent payable for the land, irrespective of whether it is cultivated or not :

Provided also that as occupancy rights accrue in *utbandi* lands, all the lands held under the same landlord by the same raiyat in which occupancy rights have accrued and for which no uniform annual rent has been fixed may be deemed to be amalgamated into a single holding.

(5) Nothing contained in Chapter VI of the Bengal Tenancy Act shall apply to an *utbandi* tenant without occupancy right.

(6) An *utbandi* tenant without occupancy right shall be liable to pay rent for the land he actually cultivates and at such rate or rates as may be agreed upon between him and his landlord.

(7) Any land in respect of which an *utbandi* tenant has not acquired occupancy rights and which is not actually cultivated in any year shall be deemed to have reverted to the landlord.

(8) An *utbandi* tenant who has not acquired occupancy right in respect of any land shall not have any right to continue the cultivation of that land or otherwise keep it in his possession after the expiry of the period for which the lands may have been taken, and where there has been no such agreement, after the expiry of three agricultural years commencing with the agricultural year in which the tenant began to cultivate the land.

The proposals of the sub-committee, other than those embodied in the draft Bill, which touch on the status or legal incidents of the tenancy are as follows :—

(1) When an *utbandi* tenant has acquired occupancy rights in any fields by twelve years' continuous possession, he shall be deemed to hold those fields as an occupancy holding to which all the provisions of Chapter V apply.

(2) For the purposes of section 27 of the Bengal Tenancy Act the rent paid or assessed for such fields in the agricultural year 1329 or any other year which the Local Government may notify in the gazette for any area shall be presumed to be the fair and equitable rent, pending the fixing of a uniform annual rent under the proposed Bill, *i. e.*, that the *utbandi* rates in force in any particular year should continue.

(3) No *char*, homestead, *udbastu*, bamboo or orchard lands should be deemed to be *utbandi* lands within the meaning of section 180 of the Bengal Tenancy Act.

4. The Governor in Council, before deciding to legislate or introducing any Bill in Council on the subject of *utbandi*, would be glad of the opinions of any persons interested therein on—

(1) the draft Bill annexed,

(2) the alternative proposals or any modification thereof given in paragraph 2 of this resolution, and

(3) the proposals detailed in paragraph 3 of this resolution.

All opinions should reach Government by the 1st April 1923.

By order of the Governor in Council,

M. C. McALPIN,

Secretary to the Government of Bengal.

THE BENGAL TENANCY (UTBANDI AMENDMENT) BILL, 1923.

A

BILL

to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be fixed for lands held under the custom of Utbandi and to make further provision in respect of such lands.

Preamble.

WHEREAS it is expedient to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money-rent may be fixed for lands held under the custom of *utbandi*, and to make such other provisions as hereinafter appear in respect of lands for which a uniform annual rent has been so fixed;

5 & 6 Geo V, c. 61, 6 & 7 Geo. V c. 37, 9 & 10 Geo V, c. 101.

And whereas the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title and extent

1. (*1*) This Act may be called the Bengal Tenancy (Utbandi Amendment) Act, 1923.

(*2*) It extends to the whole of Bengal.

Insertion of new sections 180A and 180B in Act VIII of 1885

2. After section 180 of the Bengal Tenancy Act, 1885, the following sections shall be inserted, namely:—

Fixing of uniform annual rent in respect of *utbandi* lands.

"180A. (*1*) Notwithstanding anything contained in section 180 when a raiyat holds or has held land under the custom of *utbandi*, either the landlord or the raiyat may apply to have a uniform annual rent determined for the land.

(*2*) The application shall include at the discretion of the applicant either—

(*a*) all the lands held under the custom of *utbandi* by the same tenant under the same landlord in which the tenant has acquired a right of occupancy whether under the provisions of section 183A or otherwise, or

(*b*) all the lands held under the same landlord by the tenant which the tenant has cultivated under the custom of *utbandi* at any time during the preceding period of six years if he is the last person to have cultivated the land and has not acquired occupancy rights therein, or

(*c*) both.

(*Clause 2.*)

(*3*) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Local Government.

(*4*) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (*3*) to receive applications.

(*5*) The officer receiving the application or the officer to whom the case is transferred as the case may be shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

(*6*) If the application refers to lands in which the tenant has not acquired occupancy rights, the officer may reject it in whole or in part in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if circumstances have in the meantime changed.

(*7*) If the application is not wholly rejected, the officer shall then determine the sum to be paid as a uniform annual rent, and also in the case of lands in which the tenant has not acquired occupancy rights, a premium to be paid to the landlord, and he shall order that the tenant shall, in lieu of paying the rent under custom of *utbandi*, pay the sum so determined and the premium, if any.

(*8*) In making the determination of the sum to be paid as rent, the officer shall have regard to—

(*a*) the average money rent payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average of the rents actually paid or payable to the landlord on account of the lands during the previous six years or during any shorter period for which evidence may be available;

(*c*) the rates for lands of a similar description and with similar advantages in the vicinity held under the custom of *utbandi*;

(Clause 2.)

(*d*) the rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands under the custom of *utbandi* but whose rents have been converted into uniform annual rents whether under this section or by agreement or otherwise ;

(*e*) the charges incurred by the landlord in respect of irrigation under the custom of *utbandi* and the arrangements made on settlement of the uniform annual rent for continuing those charges ;

(*f*) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy raiyats ;

(*g*) any sum agreed to by the parties to be paid as money rent :

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(*9*) The premium to be paid to the landlord in the case of lands in which the tenant has not acquired occupancy rights shall be three times the rent, or if the application is made under sub-clause (*c*) of sub-section (*2*), three times the portion of the rent determined under sub-section (*7*) on account of such lands :

Provided that the determining officer may, on the application of the tenant, if he considers that it is a hardship to the tenant to pay a premium, commute the same by ordering that, in lieu of the payment of a premium, the uniform annual rent or portion of the rent, as the case may be, on account of the lands in respect of which the premium was so payable, be increased by a sum equal to 20 per cent. of such rent or portion of rent.

(*10*) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(*11*) The officer may, on the application of the tenant, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (*7*) takes effect and that one of remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(*Clause 2*)

(*12*) The premium or the instalments thereof shall be payable and recoverable as rent, but interest shall only be awarded in respect of such instalments as are not paid by the date fixed under sub-section (*11*).

(*13*) The order shall be subject to appeal in the manner provided in section 109A, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(*14*) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual rent has been fixed under section 180A to cease to be *utbandi* lands.

"180B. Whenever an order under section 180A is passed determining a uniform annual rent for any lands, such lands shall cease to be deemed to be held under the custom of *utbandi* with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy raiyat from the date of the order.

STATEMENT OF OBJECTS AND REASONS.

The *utbandi* tenancy is a peculiar tenancy, mainly confined to the districts of Nadia and Murshidabad. It is not governed by the ordinary law of landlord and tenant but by section 180 of the Bengal Tenancy Act, which retards the acquisition of occupancy rights and restricts the application of ordinary raiyati rights, in any part of the country where the custom of *utbandi* prevails, in lands ordinarily let out under that custom and for the time being let out under that custom. The tenancy has been described as follows: "The holding is not fixed either in area or in position but consists of a variable parcel or parcels of lands ascertained by a measurement or inspection made at least once a year. The rent is fixed for each year or season in respect of the parcel or parcels of land which has been ascertained by the said measurement or inspection to have been during the year or season in question in the cultivation of the raiyat". The system has, however, now largely developed in practice into a species of settled cultivation, in which it is undesirable to restrict the acquisition of ordinary raiyati rights or to retard the acquisition of occupancy rights. A change in the law is therefore called for, and the Committee who were appointed by Government in 1921 to consider the amendment of the Bengal Tenancy Act, 1885, recommended that the law should be so modified as to enable *utbandi* tenancies to be converted into ordinary raiyati holdings by the commutation of *utbandi* rents into ordinary raiyati rents somewhat on the lines of section 40 of the Bengal Tenancy Act. In view also of the fact that the *utbandi* problem is a local one, affecting portions of a few districts only and having little connection with the main principles underlying the general Amendment Bill proposed by them, they recommended that the matter should be dealt with by separate legislation. The present Bill has accordingly been drafted separately on the basis of section 40 of the Bengal Tenancy Act. The notes on clause 2 explain any material departure from that section.

Notes on clause 2.

Section 180A(2).—This deals with the lands which can or must be included in the application for conversion of the *utbandi* rents. It makes provision for the inclusion of lands in which occupancy rights have accrued separately from those in which they have not accrued, because in the second case it may not be equitable to determine any ordinary uniform rent at all, whilst there is no reason in the first case why any application for conversion should be refused. It has also been provided that, in the case of lands in which the raiyat has not acquired occupancy rights, all those lands which the raiyat has cultivated under the same landlord under the custom of *utbandi* at any time during the preceding period of six years, if he is the last person to have cultivated the lands, must be included in the application. This is intended to save the landlord from having the worst lands thrown on his hands by the tenant making a selection only of the best lands he has cultivated during a cycle of cultivation.

Section 180A(4).—This provides for the transfer of the application to another officer for disposal.

Section 180A(5).—This provides for the initial procedure in dealing with the application. It is expected that most applications will be heard locally.

Section 180A(6).—This proposed sub-section provides for the differential treatment of applications relating to lands in which the raiyat has not acquired occupancy rights referred to in the note under proposed sub-section 180A(2).

Section 180A(7).—This proposed sub-section introduces the payment of a premium for conversion in the case of lands in which the raiyat has not acquired occupancy rights. This is warranted by the proposal that under section 180B he should obtain occupancy rights in such lands.

Section 180A (8).—This sub-section deals with the considerations to which the officer determining the sum to be paid as rent shall have regard on the lines of section 40 of the Act. It is also proposed under section 180A (8)(d) that other rents which have been converted into uniform annual

rents should be taken into consideration. Further, in view of the fact that *utbandi* rents are money-rents, and not the produce-rents contemplated by section 40, it is proposed in sub-section 180A (*8*) (*f*) that regard should be had to the rules laid down in this Act for the guidance of the civil courts in enhancing or reducing rents on account of the holdings of occupancy raiyats. Proposed sub-section 180A (*8*) (*g*) provides that any sum agreed to by the parties to be paid as money-rent should be taken into consideration.

Section 180A (*9*).—It is proposed, in order to simplify the procedure, that the premium should be a fixed multiple of the rent. For the present three times the rent has been inserted in the Bill. As, however, the compulsory payment of a premium might prevent raiyats applying for conversion, it is proposed, where it would be a hardship on the tenant to pay a premium, that he should in lieu thereof pay an additional sum of 20 per cent. to be added to the rent determined for the land in which he has not acquired occupancy rights.

Section 180A (*11*).—For similar reasons it is proposed that the premium should be made payable in instalments not exceeding three.

Section 180A (*12*).—This sub-section makes the premium payable and recoverable as rent.

Section 180A (*13*).—This sub-section provides for appeals.

Section 180A (*14*).—This prevents the proceedings under this section being upset in any way, except as provided by the section.

Section 180B.—It is proposed that when an *utbandi* rent has been converted into a uniform annual rent for any lands, such lands should cease to be deemed to be held under the custom of *utbandi*, and the raiyat should hold them as an occupancy raiyat.



The Calcutta Gazette

WEDNESDAY, FEBRUARY 14, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 404L., dated Calcutta, the 8th February, 1923.—With reference to the foot-notes to the Report of the Select Committee on the Calcutta Municipal Bill, 1921 (A Bill to amend and consolidate the law relating to the Municipal Affairs of the Town and suburbs of Calcutta), published in the *Calcutta Gazette*, Extraordinary, dated the 20th January, 1923, and in continuation of this office notification No. 173L., dated the 15th January, 1923, it is notified that Mr. Syed Nasim Ali, M.L.C., has appended the following note of Dissent to the report :—

THE CALCUTTA MUNICIPAL BILL, 1921.

Note of Dissent by Mr. Syed Nasim Ali, M.L.C.

Clauses 1 and 3.—I am against the inclusion of any further area in the Calcutta Municipality in view of the financial difficulties of the Corporation as well as in the interest of the rate-payers.

Clause 5, sub-clause (c).—I suggest that at least two of the five Aldermen to be elected by the Committee must be Muhammadans.

Clauses 7 and 20 and Schedule III.—This provision is against the principle of communal representation of the Muhammadan community by a separate electorate. The principle of a separate electorate was accepted by the Congress-League scheme and has been incorporated in the Government of India Act. There is absolutely no reason why this principle should be given a go-by now. It is an admitted fact that the Muhammadan rate-payers need separate representation by Muhammadan Councillors. This proceeds on the assumption that Muhammadans have some special interest to be protected in the Corporation. How can a Muhammadan Councillor

returned from a mixed electorate represent the Muhammadan interest in the Corporation? Separate representation by a mixed electorate is a contradiction in terms. It is said that representation by a separate electorate is inconsistent with the ideal of self-government. But it must be remembered that the analogy of other countries is not applicable to India on account of its special circumstances. India is not England or America. It is the only country in the world where there are people of different races and religions, having sharply divided religious, social and political interests. An Indian nation cannot be built in a day. We will have to proceed slowly and cautiously. So whatever may be the condition elsewhere, there can be no doubt that the separate electorate system must continue in the local self-governing bodies for years to come. Then the idea of communal representation by a mixed electorate is also against the principle of self-government, but the same has been accepted in view of the special circumstances of India. The principle of special representation by a separate electorate has been accepted so far as the European community is concerned. Again, the strongest point in favour of a separate Muhammadan electorate is that the provincial Moslem League has all along urged that the Muhammadans should have communal representation by a separate electorate in all local self-governing bodies. That the Moslem League is the only association which really represents the views of the Muhammadan community cannot be gainsaid, in view of the fact that the Congress accepts the League as the only Muhammadan association with which there should be a pact for reforms in India.

Again, the number of seats for Muhammadan Councillors is inadequate. It is very difficult to understand on what basis the number of seats has been allotted to the Muhammadans. In order that the representation of the Muhammadans may be adequate and effective the number should be increased at least to 33 per cent. of the elected members. In this connection I may be permitted to mention that for the United Provinces the Legislature has sanctioned a similar principle.

Clause 388, sub-clause (2)—should be altogether omitted. The Corporation cannot have such wide powers. It affects the religion and religious rites of the Muhammadans and unless the Governor-General has given his consent such a provision cannot be inserted. As regards the economic aspect of the question it is known to everybody that the number of cattle is not decreasing. It is the quality that has deteriorated. Further the provision, if passed into law, will defeat its object.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 433L., dated Calcutta, the 12th February, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 9th February, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE BENGAL CRUELTY TO ANIMALS (AMENDMENT) BILL, 1923.

A BILL

further to amend the Bengal Cruelty to Animals Act, 1869, and to amend the Bengal Cruelty to Animals Act, 1920.

Preamble. WHEREAS it is expedient further to amend the Bengal Cruelty to Animals Act, 1869, and to amend the Bengal Cruelty to Animals Act, 1920, in manner hereafter appearing:

It is hereby enacted as follows :—

Short title and extent. **1.** (*1*) This Act may be called the Bengal Cruelty to Animals (Amendment) Act, 1923.

(*2*) It extends to the whole of Bengal.

Amendment of section 2 of Ben. Act I of 1869. **2.** To section 2 of the Bengal Cruelty to Animals Act, 1869 as amended by the Bengal Cruelty to Animals Act, 1900 the following shall be added, namely :— Ben. Act I of 1869. Ben. Act III of 1900. [*Cf.* Ben. Act I of 1920, sec. 4.]

"or to imprisonment for a term which may extend to three months or to both, and the animal in respect of which the offence has been committed may also be confiscated."

Amendment of section 5 of Ben. Act I of 1869. **3.** In section 5 of the same Act, for the words "he shall be punished with fine which may extend to one hundred rupees," the words "he shall be punished for every such offence with fine which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both, and the animal in respect of which the offence has been committed may also be confiscated," shall be substituted.

Amendment of section 4 of Ben. Act I of 1920. **4.** To section 4 of the Bengal Cruelty to Animals Act, 1920 the following shall be added, namely :— Ben. Act I of 1920.

"and the animal in respect of which the offence has been committed may be confiscated."

Amendment of section 5 of Ben. Act I of 1920. **5.** In section 5 of the same Act, after the words "one hundred rupees" where they occur for the second time, the words "the animal in respect of which the offence has been committed may also be confiscated," shall be added.

Amendment of section 6 of Ben. Act I of 1920 and substitution of that section as amended for section 5A of Ben. Act I of 1869. **6.** To section 6 of the same Act, the words "the animal in respect of which the offence has been committed may also be confiscated" shall be added and the said section as so modified shall be substituted for section 5A of the Bengal Cruelty to Animals Act, 1869.

Amendment of section 7 of Ben. Act I of 1920. **7.** In section 7 of the Bengal Cruelty to Animals Act, 1920 after the words "or with both," the words "and the dead body of the animal so unlawfully killed may also be confiscated" shall be inserted. Ben. Act I of 1920.

(Clause 5.)

shall be punished with fine which may extend to one hundred rupees, or with imprisonment, for a term which may extend to one month, or with both, and if such person is again convicted after three previous convictions for the same offence, he shall be punished with imprisonment for a term which may extend to six months.

(*2*) Any police officer not below the rank of Sub-Inspector of Police, specially empowered by rank or name in this behalf by the Commissioner of Police, may arrest without a warrant for any offence specified in sub-section (*1*). [*Cf.* 72A, Calcutta Police Act.]

Power to order discontinuance of house, etc., as brothel, etc.

5. (*1*) When the Commissioner of Police or a Deputy Commissioner of Police receives information that any house, room or place— [*Cf.* s. 48, Calcutta Police Act.]

(*a*) is being used as a brothel or disorderly house, or for the purpose of carrying on the business of a common prostitute, in the vicinity of any educational institution or of any boarding house, hostel or mess used or occupied by students, or of any place of public worship or recreation, or

(*b*) is used as, or for the purpose, aforesaid to the annoyance of respectable inhabitants of the vicinity, or

(*c*) is used as, or for the purpose, aforesaid on any main thoroughfare which has been notified in this behalf by the Local Government on the recommendation of the Municipal Commissioners, or

(*d*) is used as a common place of assignation,—

he may cause a notice to be served on the owner, lessor, manager or occupier of the house, room or place to appear before him, either in person or by agent, on a date to be fixed in such notice, and to show cause why, on the grounds to be stated in the notice, an order should not be passed for the discontinuance of such use of such house, room or place.

(*2*) If, on the date fixed, or on any subsequent date to which the hearing may be adjourned, the Commissioner or Deputy Commissioner of Police is satisfied, after making such inquiry as he deems fit, that the house, room or place is used as described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*), as the case may be, he may, by written order, direct such owner, lessor, manager or occupier, not less than ten days from the date thereof, to discontinue such use.

(*3*) Any such order passed under sub-section (*2*) by a Deputy Commissioner of Police shall be subject to confirmation by the Commissioner of Police.

(*4*) No house, room or place, concerning which order has been passed under sub-section (*2*), shall again be used, or allowed to be used, in any manner described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*), as the case may be, and it shall be lawful for the Commissioner of Police, if such house, room or place is again used in such manner, without further inquiry, to direct the owner, lessor, manager or occupier of

(*Clause 6.*)

such house, room or place to discontinue such use within a period of seven days.

(*5*) The direction of the Commissioner of Police that a house, room or place is used in any manner, or for any purpose, described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*) shall be final, and the legality or propriety thereof shall not be questioned in any trial or judicial proceeding in any Court.

(*6*) Whoever, after an order has been passed against him by the Commissioner of Police under sub-section (*2*) or sub-section (*4*) or by a Deputy Commissioner of Police under sub-section (*2*) and confirmed under sub-section (*3*), uses, or allows to be used, any house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to twenty-five rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to three months in addition to, or in lieu of, any fine imposed. [*Cf.* s. 48A, Calcutta Police Act.]

(*7*) Whoever, after an order under sub-section (*4*), uses or allows to be used, any house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to fifty rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to six months in addition to, or in lieu of, any fine imposed. [*Cf.* s. 48B, Calcutta Police Act.]

(*8*) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, against the lessee, tenant or occupier of which an order has been passed directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on the business of a common prostitute, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

Removal and disposal of minor girls found in brothels, etc.

6. (*1*) The Commissioner of Police, or a Deputy Commissioner of Police, or a police officer not below the rank of Inspector, specially authorised in writing in this behalf by the Commissioner or a Deputy Commissioner of Police, shall be empowered to enter into any brothel or disorderly house or house of assignation, where he has knowledge or suspicion, or it is reported to him, that a girl, apparently under the age of sixteen years, is living in a house of ill fame or is carrying on, or is being made to carry on, the business of a common prostitute, and shall be entitled to remove such girl forthwith from such brothel, disorderly house or house of assignation.

(*2*) A girl who has been so removed shall be brought before a Juvenile Court constituted under section 37 of the Bengal Children Act, 1922 and if the Court is of opinion that she is under the age of fourteen years, it shall cause an inquiry to be made in manner provided in sub-section (*3*) of section 27 of the Bengal Children Act, 1922, and, if satisfied that the girl should be dealt with

(Clauses 7-8.)

under the provisions of this Act, may pass an order that such girl may be sent to an industrial school for the period provided in clause (b) of section 23 of the Bengal Children Act, 1922.

(3) If the Court is of opinion that such girl is over the age of fourteen years but is under the age of sixteen years, the Court, after a like inquiry, and if satisfied that the girl should be dealt with under the provisions of this Act, may direct that she be sent to an industrial school established under the Bengal Children Act, 1922, until in the opinion of the Court she attains the age of sixteen years.

(4) In determining the industrial school to which the girl who is being dealt with under the provisions of sub-section (2) or sub-section (3) shall be sent, the Court shall have regard to the provisions of section 39 of the Bengal Children Act, 1922.

(5) For the determination whether a girl produced before a Court under the provisions of this section is under fourteen years of age or under sixteen years of age, as the case may be, the provisions of section 38 of of the Bengal Children Act, 1922, shall apply.

Intermediate custody of girl removed from brothel or disorderly house under section 6.

7. When a girl has been removed from a brothel or disorderly house or house of assignation under the provisions of sub-section (1) of section 6, the Commissioner or Deputy Commissioner of Police or other police officer carrying out the removal shall, until such girl can be brought before the Court, cause her to be detained in such place (other than a police station or jail) as may be prescribed in this behalf by the Local Government.

Subsequent treatment of girl ordered to be sent to industrial school.

8. When an order has been passed under the provisions of section 6 that a girl be placed in an industrial school, the provisions of the Bengal Children Act, 1922, shall thereafter apply to the case of such girl as if she had been a child or young person dealt with under section 27 of that Act.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to provide legislation which will give to the authorities such powers as will materially aid them in checking the evil of commercialised vice, and as will lead to the gradual suppression of brothels and immoral traffic. The means which are suggested in the proposed Bill are :—

(a) to increase the existing penalties for solicitation and the abetment of solicitation;

(b) to amend the present laws with regard to the power of the police to order the discontinuance of a house as a brothel;

(c) to strengthen the hand of the authorities in regard to taking charge of minor girls in brothels; and

(d) to strengthen the power of the Commissioner of Police with regard to the exclusion of procurers, pimps and managers of brothels, or such persons as traffic in prostitution, from the limit of his jurisdiction.

S. C. MUKERJI,
Member in charge.

CALCUTTA:
The 12th January, 1923.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, MARCH 21, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 738L., dated the 15th March, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 14th March, 1923, and is hereby published for information, together with Statement of Objects and Reasons annexed thereto :—

THE CALCUTTA RENT (AMENDMENT) BILL, 1923.

A

BILL

to amend the Calcutta Rent Act, 1920.

WHEREAS it is expedient to amend the Calcutta Rent Act, 1920, so as to provide for its extension for a further period as hereinafter provided ; Ben. Act III of 1920.

And whereas the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act ; 5 & 6, Geo. V, c. 61 ; 6 & 7, Geo. V, c. 37 ; 9. & 10, Geo. V, c. 101.

It is hereby enacted as follows :—

Short title. **1.** (*1*) This Act may be called the Calcutta Rent (Amendment) Act, 1923.

Ben. Act III of 1920.

Amendment of section 1 of Ben. Act III of 1920.

2. In sub-section (4) of section 1 of the Calcutta Rent Act, 1920, for the words "for a period of three years from the date of the commencement of the Act" the words and figures "until the end of March, 1924" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

Inquiry has shown that the supply of houses in Calcutta is still short of the demand and, after careful consideration, it is considered desirable to extend the present Calcutta Rent Act, 1920, until the end of next cold weather.

This Act is admittedly imperfect, but, on the whole, it has served its purpose, and as the proposed extension will be for a short period, it is not considered advisable to undertake a complete revision of the Act.

Rent control can only be justified as an emergent measure, and in introducing the Bill the Government desire to place on record their definite opinion that at the end of March, 1924 such control should finally cease.

SURENDRA NATH BANERJEA,

Member in charge.

CALCUTTA;

The 12th February, 1923.

C. TINDALL,

Secretary to the Government of Bengal and

Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 753L., dated the 16th March, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 14th March, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE BENGAL AERIAL ROPEWAYS BILL, 1923.

CONTENTS.

THE BENGAL AERIAL ROPEWAYS BILL, 1923.

A

BILL

to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal.

Preamble

WHEREAS it is expedient to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act;

5 and 6, Geo V, c. 61; 6 and 7, Geo. V, c. 37; 9 and 10, Geo. V, c. 101.

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title, local extent and commencement.

1. (*1*) This Act may be called the Bengal Aerial Ropeways Act, 1923;

(*2*) It extends to the whole of Bengal, except the Hill-tracts of Chittagong; and

(*3*) It shall come into force at once:

Provided that it shall come into operation in the Darjeeling district only on such date and subject to such exceptions and modifications as the Governor in Council may, by notification in the *Calcutta Gazette*, direct.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "aerial ropeway" means an aerial ropeway (or any portion thereof) for the carriage of passengers, animals or goods, and includes all posts, ropes, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to, such aerial ropeway;

[Cf. Act IX of 1890, s. 3(*4*) (*a*) and (*c*).]

(*2*) "carrier" means any vehicle or receptacle hung or suspended from, or hauled by, a rope and used for the carriage of passengers, animals or goods or for any other purpose in connection with the working of an aerial ropeway;

(*3*) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act;

(*4*) "Inspector" means an Inspector of aerial ropeways appointed under this Act;

(*5*) "local authority" means a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, and also includes a Local Board;

The Bengal Aerial Ropeways Bill, 1923.

(Chapter I.—Preliminary.—Chapter II.—Aerial Ropeways for Public Traffic—Procedure and Preliminary Investigations.—Clauses 3, 4.)

(*6*) "order" means an order authorising the construction of an aerial ropeway under this Act;

(*7*) "post" means a post, trestle, standard, strut, stay or other contrivance or part of a contrivance for carrying, suspending or supporting a rope; [Cf. Act XIII of 1885, s. 3(5).]

(*8*) "prescribed" means prescribed by rules made by the Local Government under section 41;

(*9*) "promoter" means—

(*i*) the Local Government,

(*ii*) a local authority,

(*iii*) any person,

(*iv*) any company incorporated under the Indian Companies Act, 1913, or VII of 1913.

(*v*) any railway company as defined in the Indian Railways Act, 1890, IX of 1890.

in whose favour an order has been made under section 7 or under section 28, or on whom the rights and liabilities conferred and imposed on the promoter by this Act, and by rules and orders made under this Act as to the construction, maintenance and use of the aerial ropeway, have devolved or have been imposed by section 40;

(*10*) "rate" includes any fare, charge or other payment for the carriage of passengers, animals or goods on an aerial ropeway; and

(*11*) "rope" includes any cable, wire, rail or way, whether flexible or rigid, for suspending, carrying or hauling a carrier, if any part of such cable, wire, rail or way is carried overhead and is suspended from, or supported on, posts. [Cf. Act XIII of 1885, s. 3(4).]

CHAPTER II.

Aerial Ropeways for Public Traffic.

Procedure and Preliminary Investigations.

Application for concession.

3. Every application by an intending promoter other than the Local Government for permission to undertake the necessary preliminary investigations in regard to a proposed aerial ropeway for the public carriage of passengers, animals or goods shall be submitted to the Local Government.

Contents of application.

4. Every such application shall include—

(*a*) a description of the undertaking and of the route to be followed by the proposed aerial ropeway;

(*b*) a description of the system of construction and management and of the advantages to the community to be expected from the ropeway;

(*c*) an estimate of the cost of construction thereof;

(*d*) a statement of the estimated working expenses and profits in respect thereof;

The Bengal Aerial Ropeways Bill, 1923.

(*Chapter II.—Procedure and Preliminary Investigations.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Clauses 5, 6.*)

(*e*) a statement of the maximum and minimum rates which it is proposed to charge ;

(*f*) such maps, plans, sections and drawings in connection therewith as the Local Government may require in order to form an idea of the proposal.

Preliminary investigations.

5. Subject to the provisions of this Act, and of section 4 of the Land Acquisition Act, 1894, the Local Government may, at their discretion, accord sanction to the intending promoter to make such surveys as may be necessary, and require him to submit such detailed estimates, plans, sections and specifications and such further information as they may deem necessary for the full consideration of the proposal. I of 1894

The intending promoter shall not be entitled to claim any compensation from Government for any expense incurred under this section in the event of his application being ultimately refused.

Orders authorising the Construction of Aerial Ropeways for Public Traffic.

Order authorising construction and contents of such order.

6. (*1*) The Local Government may, on application made by any intending promoter, and after due consideration of the details supplied in accordance with section 5, publish in the *Calcutta Gazette* a draft of the proposed order authorising the construction by or on behalf of, such promoter, subject to such restrictions and conditions as the Local Government may think proper, of an aerial ropeway within any specified area or along any specified route—

(*a*) for the public carriage of passengers ;

(*b*) for the public carriage of passengers, animals and goods ; or

(*c*) for the public carriage of animals and goods.

(*2*) A notice shall be published with the draft order stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(*3*) The Local Government shall also cause public notice of the intention to make the order to be given at convenient places within the said area or along the said route, and shall, so far as may be conveniently possible, cause a like notice to be served on every owner or occupier of land over which such route lies, and shall consider any objection or suggestion, with respect to the proposed order, which may be received from any person within the date specified in such notice and decide thereon. [Cf. Act I of 1894, s. 9.]

(*4*) The draft of the proposed order may specify—

(*i*) a time within which the capital required for the construction of the aerial ropeway shall be raised ; [Cf. Act XI of 1886, s. 7.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Clause 7.)

(*ii*) a time within which the construction shall be commenced;

(*iii*) a time within which the construction shall be completed;

(*iv*) the conditions under which a concession, guarantee or financial assistance may be given by the Local Government or a local authority to the promoter;

(*v*) the rights of purchase by the Local Government or by a local authority;

(*vi*) the conditions relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary;

(*vii*) the conditions relating to the construction of the ropeway over roads and other public ways of communication except such railways and tramways as are referred to in clause (*a*) of item 5 of Part I of schedule 1 to the Devolution Rules, and with the previous sanction of the Governor General in Council over such railways and tramways;

(*viii*) the conditions under which the promoter may sell or transfer his rights to the Local Government or to a local authority, company or person;

(*ix*) the conditions under which the ropeway may be taken over by the Local Government to be worked by itself or by a local authority or by a company or person other than the promoter;

(*x*) the motive power to be used on the ropeway and the conditions (if any) on which such power may be used;

(*xi*) the minimum headway to be maintained under different parts of the rope;

(*xii*) the points under the rope at which bridges or guards shall be constructed and maintained;

(*xiii*) the amount of security (if any) to be deposited by the promoter in the event of his application being granted; and

(*xiv*) such other matters as the Local Government may deem necessary.

Final order.

7. (*1*) If, after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the Local Government are of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, they may make an order accordingly.

(*2*) Every order authorising the construction of an aerial ropeway for the public carriage of passengers, animals or goods shall be published in the *Calcutta Gazette*, and such publication shall be conclusive proof that the order has been made as required by this section.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Inspection of Aerial Ropeways for Public Traffic.—Clauses 8-10.)

Cessation of powers given by an order.

8. If a promoter authorised by an order to construct an aerial ropeway for the public carriage of passengers, animals or goods does not, within the time specified in the order,— [Cf. Ben. Act III of 1889, s. 9.]

(*a*) succeed in raising the full amount of capital required for the completion of the ropeway, or

(*b*) substantially commence the construction of the ropeway, or

(*c*) complete the construction thereof,

the powers given to the promoter by such order shall, unless the Local Government prolongs the time so specified, cease to be exercised.

Opening of aerial ropeway to passenger traffic.

9. When the construction of an aerial ropeway has been authorised under this Act, for the public carriage of animals and goods only, the Local Government may, on application made by the promoter, sanction the opening of such ropeway for the public carriage of passengers also.

Inspection of Aerial Ropeways for Public Traffic.

Inspection of aerial ropeway before opening.

10. (*1*) No aerial ropeway intended for the public carriage of passengers, animals or goods shall be opened for any kind of traffic until the Local Government or an Inspector empowered by the Local Government in this behalf has, by an order, sanctioned the opening thereof for that purpose. The sanction of the Local Government under this section shall not be given until an Inspector has, after inspection of the ropeway, reported in writing to the Local Government—

(*a*) that he has made a careful inspection of the ropeway and appurtenances;

(*b*) that the moving and fixed dimensions and other conditions prescribed under sub-section (*4*) of section 6 and sub-section (*1*) of section 7, have been complied with;

(*c*) that the ropeway is sufficiently equipped for the traffic for which it is intended;

(*d*) that the by-laws and rules prescribed by sections 27 and 41 have been duly made, approved and published; and

(*e*) that the ropeway is, in his opinion, fit for public traffic and can be used without danger either to the persons, animals or goods carried thereon, or to the persons employed thereon, or to the general public.

(*2*) The provisions of sub-section (*1*) shall extend to the opening of additional sections of the ropeway, and to deviation lines and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sub-section (*1*) apply or are extended by this sub-section.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Inspection of Aerial Ropeways for Public Traffic.—Construction and Maintenance of Aerial Ropeways for Public Traffic.—Clauses 11-14.)

Appointment and duties of Inspector.

11. (*1*) The Local Government may appoint such persons as they deem fit to be Inspectors of aerial ropeways for the public carriage of passengers, animals or goods. [*Cf.* Act IX of 1890, s. 4.]

(*2*) It shall be the duty of any such Inspector from time to time to inspect such ropeways, and to determine whether they are maintained in a fit condition and worked with due regard to the convenience and safety of the persons using them and of the general public, and consistently with the provisions of this Act.

Powers of Inspectors.

12. An Inspector shall, for the purpose of any of the duties which he is authorised or required to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and shall, for that purpose, have such powers as may be prescribed. [*Cf.* Act IX of 1890, s. 5.] Act XLV of 1860.

Facilities to be afforded to Inspector.

13. The promoter, and his servants and agents, shall afford to an Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act, or by rules made thereunder. [*Cf.* Act IX of 1890, s. 6.]

Construction and Maintenance of Aerial Ropeways for Public Traffic.

Authority of promoter to execute all necessary works.

14. (*1*) Subject to the provisions of this Act, and, in the case of immovable property not belonging to the promoter, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a promoter of an aerial ropeway for public traffic may— [*Cf.* Act IX of 1890, s. 7.]

(*a*) make such survey as he thinks necessary;
(*b*) place and maintain posts in or upon any immovable property;
(*c*) suspend and maintain a rope over, along or across any immovable property; [*Cf.* Act XIII of 1885, s. 10, first para.]
(*d*) make such bridges, culverts, drains, embankments and roads as may be necessary;
(*e*) erect and construct such machinery, offices, stations, warehouses and other buildings, works and conveniences as may be necessary; and [*Cf.* Act IX of 1890, s. 7(*a*), (*d*) and (*f*).]
(*f*) do all other acts necessary for constructing, maintaining, altering, repairing and using the aerial ropeway:

Provided that a promoter may take any action under clause (*b*) or clause (*c*) of this sub-section, notwithstanding the objection of the owner or occupier of the property affected thereby if the Collector, by an order in writing, permits such action. [*Cf.* Act IX of 1910, s. 12(*2*), first proviso.]

(*2*) When making an order under the proviso to sub-section (*1*), the Collector shall fix the amount of compensation or of annual rent or of both which should, in his opinion, be paid by the promoter to the owner of the property affected thereby, or, in the case of immovable property, to the owner or occupier thereof. [*Cf.* Act IX of 1910, s. 12(*3*).]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Construction and Maintenance of Aerial Ropeways for Public Traffic.—Working of Aerial Ropeways for Public Traffic.—Clauses 15-19.)

Temporary entry upon land for repairing or preventing accident.

15. (*1*) A promoter may, at any time, for the purpose of examining, repairing or altering an aerial ropeway for public traffic or of preventing any accident, enter upon any immovable property adjoining such ropeway, and may do all such works as may be necessary for such purpose. [*Cf.* Act IX of 1890, ss. 9 and 10.]

(*2*) In the exercise of the powers conferred by sub-section (*1*), the promoter shall cause as little damage as possible, and compensation shall be paid by him for any damage so caused; and, in a case of dispute as to the amount of such compensation, or the person to whom it shall be paid, the matter shall be referred to the decision of the Collector.

Removal of trees, structures, etc.

16. (*1*) Where any tree standing or lying near an aerial ropeway for public traffic, or where any structure or other object which has been placed or has fallen near any such ropeway subsequently to the issue of an order under section 7 in regard to such ropeway, interrupts or interferes with, or is likely to interrupt or interfere with, the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit. [*Cf.* Act IX of 1910, s. 18(3) and (4).]

(*2*) When disposing of an application under sub-section (*1*), the Collector shall, in the case of any tree in existence before the construction of the aerial ropeway, award to the person interested in the tree such compensation, if any, as he thinks reasonable, and the Collector may recover the same from the promoter in the same manner as an arrear of land revenue.

Explanation.—For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant.

Orders of Collector subject to revision by Local Government.

17. No suit shall lie, in respect of any matter referred to in the proviso to sub-section (*1*) of section 14, sub-section (*2*) of section 14, section 15 or sub-section (*1*) of section 16, but every order made by a Collector under any of those sections, and every award made by him under sub-section (*2*) of section 16, shall be subject to revision by the Local Government. [*Cf.* Act IX of 1890, s. 10(2), and Act IX of 1910, s. 12(4).]

Working of Aerial Ropeways for Public Traffic.

Promoter may fix rates.

18. The promoter of an aerial ropeway for public traffic shall, for the purposes of working an aerial ropeway, and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix the rates for the carriage of passengers, animals or goods on the aerial ropeway. [*Cf.* Ben. Act III of 1883, s. 24.]

Duty of promoter to work aerial ropeway without partiality.

19. No promoter shall, for the purposes of working an aerial ropeway for public traffic, make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in any respect whatsoever, or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [*Cf.* Act IX of 1890, s. 42 (2).]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Working of Aerial Ropeways for Public Traffic.—Discontinuance of Aerial Ropeways for Public Traffic.—Clauses 20-22.)

Reporting of accidents.

20. When any of the following accidents occur in the course of working an aerial ropeway for public traffic, namely :— [Cf. Act IX of 1890, s 83]

(*a*) any accident attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; Act XLV of 1860.

(*b*) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property ;

(*c*) any accident of any other description which the Local Government may notify in this behalf in the *Calcutta Gazette ;*

the promoter shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector of the aerial ropeway ;

and the promoter's servant in charge of the station on the aerial ropeway nearest to the place at which the accident occurred or, where there is no station, the promoter's servant in charge of the section of the aerial ropeway on which the accident occurred shall, with the least possible delay, give notice of the accident to the Magistrate of the district in which the accident occurred and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Local Government may appoint in this behalf.

Power to close and re-open aerial ropeway.

21. (*1*) If, after inspecting any aerial ropeway opened to public traffic, an Inspector is of opinion that the ropeway or any specified part thereof cannot be used without danger to the public, or is no longer in a fit state for the carriage of any specified class of traffic, he shall state that opinion, together with the grounds therefor, to the Local Government ; [Cf. Act IX of 1890, ss. 23 and 24]

and the Local Government may thereupon order that, for reasons to be set forth in the order, the aerial ropeway, or the part thereof so specified, be closed to all traffic or to any specified class of traffic :

Provided that, in any case of extreme urgency, the Inspector may order the suspension of the working of the ropeway or any part thereof which he considers necessary, pending the final orders of the Local Government on the case.

(*2*) When, under sub-section (*1*), an aerial ropeway or any part thereof has been closed to any traffic, it shall not be re-opened to such traffic until it has been inspected, and its re-opening sanctioned, in accordance with the provisions of this Act.

Discontinuance of Aerial Ropeways for Public Traffic.

Cessation of powers of promoter on discontinuance of aerial ropeway.

22. If, at any time after the opening of an aerial ropeway for public traffic, it is proved to the satisfaction of the Local Government that the promoter has, [Cf. Ben. Act III of 1898, s. 89.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Discontinuance of Aerial Ropeways for Public Traffic.—Purchase of Aerial Ropeways for Public Traffic.—Clauses 23, 24.)

for three months, discontinued the working of the ropeway or of any part thereof, without a reason sufficient, in the opinion of the Local Government, to warrant such discontinuance, the Local Government, if they think fit, may declare that the powers of the promoter in respect of such aerial ropeway or part thereof shall be at an end; and thereupon the said powers shall cease and determine.

Power of removal of aerial ropeway on cessation of promoter's powers

23. (*1*) When a declaration has been made under section 22, in respect of any aerial ropeway or of any part thereof, an officer appointed in that behalf by the Local Government may, at any time after the expiration of two months from the date determined as aforesaid, remove such aerial ropeway or part thereof, as the case may be; [*Cf.* Ben Act III of 1883, s 39]

and the promoter shall pay to the officer so appointed such costs of removal as shall be certified by that officer to have been incurred by him.

(*2*) If the promoter fails to pay the amount of costs so certified within one month after the delivery to him of the certificate or of a copy thereof, such officer may, without any previous notice to the promoter and without prejudice to any other remedy which he may have for the recovery of the said amount, sell and dispose of the materials of the aerial ropeway or part thereof so removed;

and may, out of the proceeds of the sale, pay and reimburse himself the amount of costs certified as aforesaid and of the costs of the sale;

and shall pay over the residue (if any) of such proceeds to the promoter.

Purchase of Aerial Ropeways for Public Traffic.

Power of Local Government and local authorities to purchase aerial ropeways for public traffic

24. (*1*) When an order under section 7 has been made in favour of a promoter of an aerial ropeway for public traffic, not being the Local Government, or a local authority, the Local Government, or a local authority specified in the order published under section 7, shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in such order, have the option of purchasing the undertaking, and if the Local Government, or the local authority with the previous sanction of the Local Government, elect to purchase, the promoter shall sell the undertaking to the Local Government or to the local authority as the case may be, on payment of the value of all lands, buildings, works, materials, plant and apparatus of the promoter, suitable to, and used by him for the purposes of, the undertaking, such value to be in case of difference or dispute determined by arbitration: [*Cf* Act IX of 1910, s 7]

Provided that the value of such lands, buildings, works, materials, plant and apparatus shall be deemed to be their fair market value at the time of purchase,

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Purchase of Aerial Ropeways for Public Traffic.—Clause 25.)

due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, plant and apparatus, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking :

Provided also that there shall be added to such value, as aforesaid, such percentage, if any, not exceeding twenty *per cent.* of that value, as may be specified in the order passed under section 7, on account of compulsory purchase.

(2) Where a purchase has been effected under sub-section *(1)*—

(*a*) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the promoter or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(*b*) save as aforesaid, the order published under section 7 shall remain in full force, and the purchaser shall be deemed to be the promoter :

Provided that where the Local Government elects to purchase, the order under section 7 shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation.

(3) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the promoter by the Local Government or the local authority, as the case may be.

(4) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Local Government, waive its option to purchase, and enter into an agreement with the promoter for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section *(1)* upon such terms and conditions as may be stated in the agreement.

Option to promoter to sell when option to purchase not exercised and order revoked by consent.

25. Where, on the expiration of any of the periods referred to in section 24, neither the Local Government nor a local authority purchases the undertaking, and the order published under section 7 is, on the application or with the consent of the promoter, revoked, the promoter shall have the option of disposing of all lands, buildings, works, materials, plant and apparatus belonging to the undertaking in such manner as he may think fit. [*Cf.* Act IX of 1910, s. 8.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Inability or Insolvency of Promoter.—By-laws.—Clauses 26, 27.)

Inability or Insolvency of Promoter.

Proceedings in case of inability or insolvency of promoter.

26. (*1*) If, at any time after the opening of an aerial ropeway for public traffic, it appears to the Local Government that the promoter is insolvent or is unable to maintain the ropeway, or to work the same with advantage to the public, or at all, the Local Government may declare that the powers of the promoter, in respect of such aerial ropeway, shall, at the expiration of six months from the date of such declaration, be at an end; and thereupon the said powers shall, at the expiration of that period, cease and determine. [Cf. Ben. Act III of 1868, s. 40.]

(*2*) At any time after the expiration of the said six months, an officer appointed by the Local Government in that behalf, may, notwithstanding anything contained in the Provincial Insolvency Act, 1920, remove the aerial ropeway in the same manner and subject to the same provisions as to the payment of costs and to the same remedy for the recovery thereof, in every respect, as in cases of removal under section 23. V of 1920.

By-laws.

Power of promoter to make by-laws.

27. (*1*) A promoter of an aerial ropeway for public traffic shall, subject to the provisions of sub-section (*3*), make by-laws— [Cf. Act IX of 1890, s. 47.]

(*a*) for regulating the rate of speed at which carriers are to be moved or propelled;
(*b*) for declaring what shall be deemed to be dangerous or offensive goods, and for regulating the carriage of such goods;
(*c*) for regulating the maximum number of passengers and animals, and the maximum weight of goods, to be carried in each carrier;
(*d*) for regulating the use of steam-power, or any other mechanical power or electrical power, on the aerial ropeway;
(*e*) for regulating the conduct of the promoter's servants;
(*f*) for regulating the terms and conditions on which the promoter will warehouse or retain goods at any station on behalf of the consignee or owner of such goods; and
(*g*) generally for regulating the travelling upon, and the use, working and management of, the aerial ropeway.

(*2*) Such by-laws may provide that any person who contravenes the provisions of any of them shall be liable to fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a breach of a by-law made under clause (*e*) of sub-section (*1*), the promoter's servant responsible for the same shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the promoter from his pay.

(*3*) A by-law made under this section shall not take effect until it has been confirmed by the Local Government and published in the *Calcutta Gazette*:

Provided that no such by-law shall be so confirmed until it has been previously published by the promoter in such manner as may be prescribed.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Clauses 28, 29.)

CHAPTER III.

Private Aerial Ropeways for certain purposes.

Application for acquisition of land in case of certain private aerial ropeways.

28. Where the Local Government are satisfied that the construction, extension, working or management of an aerial ropeway for private traffic is likely to prove useful to the public by reason of its facilitating the transport of commodities of general utility or required for the conservation of undertakings supplying those commodities, and where the intending promoter of such aerial ropeway is desirous of obtaining any land for the purpose of such construction, extension, working or management, the Local Government may, on the application of such promoter, acquire on his behalf such land under the provisions of Part VII of the Land Acquisition Act, 1894, or procure the temporary occupation of the same under the provisions of Part VI of that Act, whether the said intending promoter is or is not a company as defined in that Act. I of 1894

Agreement.

29. (*1*) No order shall be made by the Local Government under section 28 until an inquiry has been held as hereinafter provided and the intending promoter has entered into an agreement with the Government in respect of the matters mentioned in sub-section (*4*).

(*2*) Such inquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(*3*) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court. Act V of 1908

(*4*) Such officer shall report to the Local Government the result of the inquiry, and if the Local Government are satisfied that the ropeway is or is likely to be useful to the public, they shall, subject to any rules made under section 41, require the intending promoter to enter into an agreement with the Government, providing to the satisfaction of the Local Government for the following matters, namely :—

(*a*) the terms on which the ropeway shall be held by the promoter ;

(*b*) the time within which, and the conditions on which, the ropeway shall be constructed, maintained and used.

(*5*) Every such agreement shall, as soon as may be after its execution, be published in the *Calcutta Gazette*.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Clause 30.—Chapter IV.—Offences, Penalties and Arrest.—Clauses 30, 31.

Temporary occupation of land in case of private aerial ropeway

30. If land is to be occupied temporarily in accordance with the provisions of section 28 on behalf of the promoter of an aerial ropeway for private traffic, and if the Local Government on the application of the promoter so direct, then the provisions of Part VI of the Land Acquisition Act, 1894, shall apply to such occupation, subject to the provisions that, notwithstanding anything contained in section 35 of the Land Acquisition Act, 1894, the occupation and use by the promoter of the land occupied shall continue for such period, not exceeding ten years, as the Local Government may fix, and that the compensation to the owner of such land shall be fixed with due regard to any additional loss or inconvenience caused to him by reason of such period of occupation.

I of 1894

CHAPTER IV.

Offences, Penalties and Arrest.

Failure of promoter to comply with Act

[Cf. Act XI of 1886, s 27, and Ben. Act III of 1883, s 29.]

31. If a promoter of an aerial ropeway for public traffic—

(*a*) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under section 7, or

(*b*) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of section 10, or

(*c*) fails to comply with the provisions of section 13, or

(*d*) fails to pay within a reasonable time any compensation awarded by the Collector or by the Local Government under sections 14, 15, 16 or 17, or

(*e*) contravenes any of the provisions of section 19, or

(*f*) fails to send notice of any accident as required by section 20, or

(*g*) fails to close an aerial ropeway in accordance with an order passed under sub-section (*1*) of section 21, or re-opens any aerial ropeway in contravention of sub-section (*2*) of that section, or

(*h*) continues to exercise the powers of a promoter, in respect of any aerial ropeway, in contravention of the provisions of section 22 or section 26, or

(*i*) fails to comply with the provisions of section 27 or section 36, or

(*j*) contravenes any of the provisions of section 37, or

(*k*) contravenes the provisions of any rule made under section 41,

The Bengal Aerial Ropeways Bill, 1923.

(Chapter IV.—Offences, Penalties and Arrest.—Clauses 32-35.)

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act, or of any other remedy which may be obtained against him) be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

Unlawfully obstructing promoter in exercise of his powers.

32. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing, maintaining, altering, repairing or working an aerial ropeway, or injures or destroys any mark made for the purpose of setting out the line or route of such ropeway, he shall be punished with fine which may extend to two hundred rupees. [*Cf.* Act XI of 1886, s. 28.]

Unlawfully interfering with aerial ropeway.

33. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully does any of the following things, namely:— [*Cf.* Act XI of 1886, s. 29]

(*a*) interferes with, removes or alters any part of an aerial ropeway or of the works connected therewith,

(*b*) does anything in such a manner as to obstruct any carrier travelling on an aerial ropeway,

(*c*) attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (*a*) or clause (*b*), [Act XLV of 1860.]

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punishable with fine which may extend to two hundred rupees.

Maliciously doing, abetting or attempting to do, acts endangering safety of persons travelling or being upon aerial ropeway.

34. If any person does anything mentioned in clauses (*a*), (*b*) or (*c*) of section 33 or does, attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of any other act or thing in relation to an aerial ropeway with intent or with knowledge that he is likely to endanger the safety of any person travelling or being upon the aerial ropeway, he shall be punished with imprisonment for a term which may extend to fourteen years. [*Cf.* Act IX of 1890, s. 128.] [Act XLV of 1860.]

Arrest for offences against certain sections.

35. (*1*) If any person commits any offence under section 32 which obstructs the working of an aerial ropeway for public traffic, or commits any offence punishable with imprisonment under section 34, he may be arrested without warrant or other written authority by any servant of the promoter, or by any police-officer, or by any other person whom such servant or officer may call to his aid. [*Cf.* Act IX of 1890, s. 131.]

(*2*) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or to commit him for trial.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter V.—Supplementary Provisions.—Clauses 36-40.)

CHAPTER V.

Supplementary Provisions.

Returns.

36. A promoter of an aerial ropeway for public traffic shall, in respect of such ropeway, submit to the Local Government returns of capital, receipts and traffic at such intervals and in such forms as may be prescribed. [*Cf.* Act IX of 1890, s. 52.]

Protection of roads, railways, tramways and waterways.

37. No promoter of an aerial ropeway shall, in the course of the construction, repair, working or management of such ropeway, cause any permanent injury to any public road, railway, tramway or waterway, or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway, tramway or waterway. [*Cf.* Act IX of 1910, s. 51.]

Acquisition of land by a promoter.

38. The Local Government may, if they think fit, on the application of any promoter of an aerial ropeway for public traffic desirous of obtaining any land for the purpose of constructing, working or managing such ropeway, direct that he may, subject to the provisions of this Act, acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the promoter were a company. [*Cf.* Act IX of 1910, s. 57(*2*).] I of 1894.

Limitation of claims for damage to animals or goods.

39. No person shall be entitled to a refund of an overcharge in respect of animals or goods carried by an aerial ropeway for public traffic or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the promoter within six months from the date of the delivery of the animals or goods for carriage by the ropeway.

Application of Act to certain private aerial ropeways.

40. (*1*) Sections 1, 2, 11, 12, 13, 14, 15, 16, 20 and 21, clauses (*c*), (*f*), (*g*) and (*k*) of section 31, sections 34, 35 and 37, and sub-sections (*1*) and (*3*) and clauses (*a*), (*b*), (*d*), (*i*) and (*k*) of sub-section (*2*) of section 41 shall also apply to the private aerial ropeways constructed for the purposes referred to in section 28, whether constructed before or after the commencement of this Act:

Provided that, in the application of section 16 to any such aerial ropeway, for the words "the issue of an order under section 7" the words "the opening of the ropeway to traffic or the issue of a notification for the acquisition of, or an order for the temporary occupation of, land in accordance with the provisions of section 28, whichever is earlier," shall be deemed to be substituted.

(*2*) Clauses (*a*), (*c*) and (*e*) of sub-section (*1*) and sub-section (*2*) of section 10 shall also apply to all such private aerial ropeways constructed after the commencement of this Act, and clause (*b*) of section 41 shall apply to such ropeways to the extent that section 10 applies thereto.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter V.—Supplementary Provisions.—Clause 41.)

(*3*) The Local Government, on the application of the promoter or otherwise, may declare that the provisions of section 28 and of sub-section (*1*) of this section shall apply to any private aerial ropeway or class of private aerial ropeways for private traffic.

Power of Local Government to make rules.

41. (*1*) The Local Government may, after previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the powers of an Inspector appointed under section 11;

(*b*) the duties of the promoter's servants, police-officers, and Magistrates on the occurrence of an accident;

(*c*) the maximum and minimum rates which a promoter may fix under section 18;

(*d*) the standard dimensions and specifications with which the aerial ropeway is to conform;

(*e*) the manner of previous publication of by-laws made under section 27;

(*f*) the intervals at which a promoter shall submit returns under section 36, and the forms in which such returns shall be submitted;

(*g*) the preparation, submission and auditing of the accounts of the promoter;

(*h*) the method of arbitration for the settlement of disputes;

(*i*) the manner in which notices under this Act shall be served;

(*j*) the manner in which, and the conditions under which, the through booking of goods may be permitted between an aerial ropeway and a railway, tramway or another aerial ropeway; and

(*k*) the safe and efficient working of aerial ropeways.

(*3*) All rules made under this section shall be published in the *Calcutta Gazette.*

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to empower the Government of Bengal to authorise surveys and the carrying of aerial ropeways over private property; to provide for compensation to the owners of such property; and to ensure the safe and efficient working of the ropeways when constructed.

SAIYID NAWAB ALI CHAUDHURI,
Member-in-charge.

CALCUTTA;
The 6th January, 1923.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

No. 755L., dated the 16th March, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 14th March, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE INDIAN SALT (BENGAL AMENDMENT) BILL, 1923.

A

BILL

to amend the Indian Salt Act, 1882.

WHEREAS it is expedient to amend the Indian Salt Act, 1882, in its application to Bengal, in order to dispense with the compulsory attendance of police-officers at searches by officers of the Salt Department ; XII of 1882

And whereas the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 and 6 Geo. V, c. 61; 6 and 7 Geo. V, c. 37; 9 and 10, Geo. V, c. 101.

It is hereby enacted as follows :—

Short title and local extent.

1. (*1*) This Act may be called the Indian Salt (Bengal Amendment) Act, 1923.

(*2*) It extends to the whole of Bengal.

Amendment of section 18 of Act XII of 1882.

2. In section 18 of the Indian Salt Act, 1882—

(*i*) the word "then" where it occurs for the first and second time, shall be omitted ;

(*ii*) before the words "summon in writing" the words "if he considers it necessary, but not otherwise," shall be inserted ; and

(*iii*) the words and brackets "(but always in the presence of an officer of police not inferior in rank to a head constable)" shall be omitted

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to remove from the Indian Salt Act, 1882, those provisions which now require the presence of police officers at all searches made by officers of the Salt Department for the detection of offences under the Act. It is considered that the salt officers should carry out ordinary searches without the assistance of the police but the amendments proposed will not debar them from calling in the police when necessary.

J. DONALD,
Member-in-charge.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

No. 757L., dated the 16th March, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 14th March, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE CALCUTTA IMPROVEMENT (AMENDMENT) BILL, 1923.

A

BILL

further to amend the Calcutta Improvement Act, 1911. Ben. Act V of 1911.

WHEREAS it is expedient further to amend the Calcutta Improvement Act, 1911, in the manner hereinafter appearing ;

And whereas the previous sanction of the Governor-General has been obtained, under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act ; 5 & 6, Geo. V, c. 61; 6 & 7, Geo V, c 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows :—

Short title. **1.** This Act may be called the Calcutta Improvement (Amendment) Act, 1923.

Amendment of long title and preamble to Bengal Act V of 1911. **2.** In the long title and in the first paragraph of the preamble to the Calcutta Improvement Act, 1911 (hereinafter called the said Act) after the word "Calcutta" the words "and the development of the suburbs and environs of Calcutta" shall be inserted.

Repeal. **3.** The following portions of the said Act are hereby repealed, namely :—

"(*a*) clause (*f*) of section 2 ;

(*b*) in the heading to Chapter III, the words 'and Re-housing Schemes' ;

(*c*) sections 39, 40, 42, 51, 52, 66, 68 (and the sub-heading over it), 120, 121, 124, 127 and 128 ;

(*d*) in section 67, the words and figures 'or section 66' ; and

(*e*) in clause (*i*) of section 171A, the words 'and, in the case of a hut, to twenty rupees', and in clause (*ii*) of that section, the words 'and, in the case of a hut, to five rupees.'

Amendment of section 1.

4. For sub-section (*3*) of section 1 of the said Act, the following shall be substituted, namely :—

"(*3*) It shall extend in the first instance only to the Calcutta Municipality ; but any provision of this Act may be extended by the Local Government, entirely or in part, by notification, under the procedure prescribed by section 148, to the Maniktola, Cossipore-Chitpur, Garden Reach, Tollygunge and South Suburban Municipalities, and to any other specified area in the neighbourhood of the Calcutta Municipality :

Provided that before making any such extension to any area which lies to the west of the river Hooghly the Local Government shall obtain and consider the opinion of any Board of Trustees for the improvement of Howrah which may hereafter be created.

(*4*) The decision of the Local Government that a specified area is in the neighbourhood of the Calcutta Municipality shall be recorded in the notification issued under sub-section (*3*), and shall be final."

Amendment of section 9.

5. To section 9 of the said Act the following shall be added, namely :—

"(*3*) In the case of any person or class of persons the Local Government may waive the disqualification referred to in clause (*e*) of sub-section (*1*)." [Cf. Bur. Act V of 1920, s. 7 (3).]

Amendment of section 27.

6. To section 27 of the said Act the following shall be added, namely :—

"(*5*) Notwithstanding anything contained in this section, the Board may authorise the Chairman, for reasons to be recorded in their proceedings, to enter into a contract without inviting tenders or without the acceptance of any tender, which may have been received."

Amendment of section 32.

7. In clause (*a*) of section 32 of the said Act for the words "in the case of officers and servants whose monthly salary does not exceed three hundred rupees" the following shall be substituted, namely :—

"in the case of appointments carrying a salary of not more than three hundred rupees."

New section substituted for section 36.

8. For section 36 of the said Act the following shall be substituted, namely :—

Power of Board to frame improvement scheme.

"36. (*1*) The Board may from time to time frame an improvement scheme for Calcutta or for any of the areas mentioned or referred to in sub-section (*3*) of section 1, as they may think fit, for the purposes of—

(*a*) providing building sites, particularly for the accommodation of persons displaced or likely to be displaced by improvement schemes, or

(b) remedying defective ventilation, or

(c) creating new, or improving existing, means of communication and facilities for traffic, or

(d) affording better facilities for conservancy or drainage, or

(e) providing open spaces for the purposes of recreation or ventilation, or

(f) the re-arrangement and reconstruction of the streets and buildings, or any of them, within such area, with a view to removing the sanitary defects in such area.

(2) When in the opinion of the Corporation it is desirable that an improvement scheme should be undertaken in any area for the purposes of clause (f) of sub-section (1), the Corporation may make an official representation to the Board that an improvement scheme should be framed for such area."

Amendment of section 38.

9. In sub-sections (1), (2) and (3) of section 38 of the said Act for the words "a general improvement scheme" the words "an improvement scheme" shall be substituted.

New section substituted for section 41.

10. For section 41 of the said Act the following shall be substituted, namely:—

"41. An improvement scheme may provide for all or any of the following matters, namely:—

Matters for which a scheme may provide.

(a) the acquisition by the Board of any land within the area of the scheme;

(b) the laying out or relaying out of the land in the said area so as to form suitable plots for the erection of buildings or otherwise;

(c) such demolition, alteration or reconstruction of buildings, situated on land which it is proposed to acquire in the said area, as the Board may think necessary;

(d) the construction of any buildings which the Board may consider it necessary to erect for any purpose, and in particular the construction, maintenance and management of dwellings and shops for persons displaced by the execution of any improvement scheme and for the accommodation of the poorer classes generally;

(e) the laying out or alteration of streets (including bridges, causeways and culverts, if required);

(f) the levelling, paving, metalling, flagging and channelling of the said streets;

(g) reclamation and drainage, inclusive of sewerage and of surface drainage and sewage disposal; [Cf. Bur. Act V of 1920, s. 41(e).]

(*h*) the alteration or extension of any water-mains within the said area, or the extension of any system of water-mains in neighbouring areas ;

(*i*) the provision of such lamps, lamp-posts and other apparatus for lighting as may be required by the Corporation and as would have been supplied by them if they had constructed the said streets ;

(*j*) the provision of such sanitary conveniences as are ordinarily provided in a municipality ;

(*k*) the raising, lowering, or levelling of any land in the area comprised in the scheme ;

(*l*) the formation or retention of open spaces for the purposes of recreation, ventilation or ornament ;

(*m*) the reservation of sites for schools, hospitals asylums, markets and other charitable or public institutions; and

(*n*) any other matters, consistent with this Act, which the Board may think fit."

Amendment of section 45.

11. In clause (*a*) of sub-section (*2*) of section 45 of the said Act for the words "a general improvement scheme or a street scheme, as the case may be" the words "an improvement scheme" shall be substituted.

Amendment of section 47.

12. In section 47 of the said Act—

(*1*) to sub-section (*1*) the following shall be added, namely :—

"Provided that if at any time before the sanction of the Local Government is accorded under section 48, the Board propose to acquire any land not included within the notice prepared under section 43, sub-section (*1*), they shall first serve in respect of the said land the notices prescribed by section 45";

(*2*) for the words "complete plans" in clause (*a*) of sub-section (*2*) the words "preliminary plans" shall be substituted ; and

(*3*) to sub-section (*3*) the words "and shall forward a copy of the said application to the Corporation" shall be added.

New section 49A.

13. After section 49 of the said Act the following shall be inserted, namely :—

Preparation of plans and estimates of cost.

"49A. (*1*) Before proceeding to execute any part of an improvement scheme sanctioned under section 48, the Board shall prepare complete plans and estimates of the cost of the proposed works, and shall forward a copy

of such plans and estimates to the Corporation. Within sixty days from the receipt of the said plans and estimates, the Corporation may make any recommendation to the Board that the said plans and estimates be modified in any respect, and the Board shall consider such recommendation.

(2) If the Board and the Corporation do not agree as to the works which should be executed in any improvement scheme, the matter shall be referred to the Local Government, whose orders thereon shall be final."

Amendment of section 53.

14. For the proviso to section 53 of the said Act the following shall be substituted, namely :—

"Provided that, with the approval of the Local Government, the Board may, for reasons to be stated—

(*i*) in the application submitted to the Local Government under sub-section (*1*) of section 47, or

(*ii*) in the complete plans forwarded to the Corporation under section 49A,

lay out or alter any street so as to be of less width than the minimum prescribed by this section."

Amendment of section 54.

15. In section 54 of the said Act—

(*1*) in sub-section (*1*) for the words "is required for executing any improvement scheme" the words "is within the area of any improvement scheme, and is required for the purposes of such scheme" shall be substituted;

(*2*) the word "actual" before the word "loss" in the penultimate line of the same sub-section, shall be omitted; and

(*3*) for sub-section (*2*) the following shall be substituted, namely :—

"(*2*) If any question or dispute arises—

(*a*) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (*1*), or

(*b*) as to whether any building, street, square or other land, or any part thereof, is required for the purposes of the scheme,

the matter shall be referred to the Local Government, whose decision shall be final".

Amendment of section 63.

16. In sub-section (*8*) of section 63 of the said Act after the word "building", where it first occurs, the words and brackets "(other than a hut)" shall be inserted.

Amendment of section 65

17. In section 65 of the said Act—

(*1*) for sub-section (*1*) the following shall be substituted, namely:—

"(*1*) Whenever, on the application of the Board, the Corporation are satisfied—

(*a*) that any street or portion of a street laid out or altered by the Board has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the plans agreed upon or finally approved under section 49A, and

(*b*) that such lamps, lamp-posts and other apparatus as the Corporation would themselves ordinarily provide in a street laid out or altered by them, and as ought to be provided by the Board, have been so provided, and

(*c*) that water-mains and sanitary conveniences as shown in the plan agreed upon or finally approved under section 49A have been duly provided in such street, or portion of a street,

the Corporation shall, by resolution, agree to take over such street or portion of a street, and the street or portion of a street shall thereupon vest in them, and shall thenceforth be maintained, kept in repair, lighted and cleansed by them";

(*2*) in sub-section (*2*) and in sub-section (*3*) for the words "the General Committee" the words "the Corporation" shall be substituted.

New section substituted for section 69

18. (*1*) For the sub-heading over section 69 of the said Act, the sub-heading "Acquisition of Land" shall be substituted.

(*2*) For the said section 69 the following shall be substituted, namely:—

Power of Board to acquire land

"69. The Board may—

(*a*) with the previous sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act; and I of 1894

(*b*) without such sanction, acquire land for any of the said purposes by agreement with any person:

Provided that any such agreement may be entered into notwithstanding that the land is not immediately required for any of the said purposes."

Amendment of section 72

19. In section 72 of the said Act—

(*1*) for sub-sections (*6*) and (*7*) the following shall be substituted, namely:—

"(*6*) For the purpose of filling up the temporary vacancies in respect of the

Assessors of the Tribunal, the Local Government shall constitute a panel of qualified persons, of whom one-half shall be nominated by the Corporation, and may from time to time, subject to such nomination, alter or add to the membership of such panel.

(7) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, or when any member has an interest in any property in respect of which the Tribunal is to make an award, the Local Government shall forthwith appoint a person, who is on the panel constituted under sub-section (6), to be a member in his place, either for the remainder of his term of office, or for the period of his temporary absence or for the hearing of the case in respect of property in which he is interested, as the case may be :

Provided that one of the persons nominated to the panel by the Corporation shall always be appointed in place of an assessor appointed by them under sub-section (3).

(8) Notwithstanding anything contained in sub-section (1), any person appointed, temporarily, under sub-section (7) in place of a member of the Tribunal, shall continue to hold office for the purposes of any case which he has begun to hear, until the award in such case has been determined.

(9) The names of all persons enrolled on a panel constituted under sub-section (6), and all appointments made under this section, shall be published by notification."

New section substituted for section 75.

20. For section 75 of the said Act the following shall be substituted, namely :—

Payments by Board on account of Tribunal.

"75. (1) The President of the Tribunal shall, on or before the fifteenth day of January in each year, submit to the Local Government an estimate of the expenditure to be incurred during the ensuing year on account of the remuneration, prescribed under section 73 for members of the Tribunal, the salaries, leave allowances and acting allowances prescribed under section 74 for officers and servants of the Tribunal, and the rent of buildings and other necessary charges incurred by the Tribunal.

(2) The Local Government shall forward a copy of the estimate to the Board, and after considering such representations as the

Board may make, shall sanction the estimate with such modifications, if any, as the Local Government may think necessary.

(3) The Board shall thereupon from time to time make payments to the President of the Tribunal for disbursement in accordance with the sanctioned estimates, and may be required by the Local Government to make such further payments in excess of the sanctioned estimate, as the Local Government may from time to time direct."

New section substituted for section 78.

21. For section 78 of the said Act the following shall be substituted, namely :—

"78. (1) In any case in which the Local Government have sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein greater than a lease for years having seven years to run, may make an application to the Board, requesting that the acquisition of the land be abandoned.

Abandonment of acquisition in consideration of special payment.

(2) The Board shall admit every such application if it—

(a) reaches them before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and I of 1894.

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

Explanation.—A mortgagee shall not be deemed to be a person having an interest in the land greater than a lease for years having seven years to run.

(3) If the Board decide to admit any such application, they shall forthwith inform the Collector, and the Collector shall thereupon stay proceedings for the acquisition of the land, and the Board shall proceed to fix a fee in consideration of which the acquisition of the land may be abandoned.

(4) Such fee shall be payable by the applicant on or before a date to be fixed by the Board in this behalf; and such date shall not be less than four years from the publication of the notification under section 6 of the Land Acquisition Act, 1894.

(5) Before the date so fixed, the person from whom the Board have arranged to accept the said fee, may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board either—

(i) to leave the said fee outstanding as a charge on his interest in the land,

subject to the payment in perpetuity of interest at the rate of six per cent. per annum, the said interest to run from the date fixed under sub-section (*4*), or

(*ii*) to pay the said fee by such number of equal yearly or half-yearly instalments of principal or of principal and interest, as may be approved by the Board, interest in both cases being calculated at the rate of six per cent. per annum on the amount outstanding.

(*6*) When the said fee has been paid on or before the date fixed under sub-section (*4*), or when an agreement has been executed in pursuance of sub-section (*5*) in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(*7*) If the said fee be not paid on or before the date fixed under sub-section (*4*), the Collector shall then proceed to acquire the land.

(*8*) If any sum payable under an agreement executed in pursuance of sub-section (*5*) be not paid on the date on which it is due, so much of the fee fixed by the Board under sub-section (*3*) as is still unpaid, shall be payable on that date, in addition to the said sum.

(*9*) At any time after an agreement has been executed in pursuance of clause (*i*) of sub-section (*5*), any person may pay off the balance outstanding of the charge created thereby, with interest due, if any, at the rate of six per cent. per annum, up to the date of such payment.

(*10*) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (*5*), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land."

Amendment of section 79.

22. In section 79 of the said Act for the word, figure and brackets "sub-section (*4*)" the word, figure and brackets "sub-section (*5*)", and for the words "four per cent." the words "six per cent.", shall be substituted.

Amendment of section 80.

23. In section 80 of the said Act for the word, figure and brackets "sub-section (*4*)" the word, figure and brackets "sub-section (*5*)" shall be substituted.

Amendment of section 81

24. For sub-section (*2*) of section 81 of the said Act the following shall be substituted, namely:—

"(*2*) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(*a*) shall give notice by advertisement in local newspapers; and

(*b*) shall offer a prior right to take on lease or purchase such land to any person or his heirs, executors or administrators, who formerly had any interest in such land and who, in the opinion of the Board, has a superior claim to such land, or if it appears to the Board that no person has such a superior claim, the Board shall put up to auction the right to take on lease or purchase such land among all persons who, previous to its acquisition, had interests in any portion of such land greater than a lease for years having seven years to run:

Provided that the prior right referred to in this clause need not be offered or put up to auction, if the Board consider that to do so would be detrimental to the carrying out of the purposes of this Act:

Provided also that before putting up to auction the right to take a lease or purchase such land, the Board may fix a minimum reserve price, below which the said right shall not be sold."

Amendment of section 82

25. For sub-section (*1*) of section 82 of the said Act the following shall be substituted, namely:—

(*1*) The duty imposed on instruments relating to immovable property and liable to duty under the following articles of Schedule I to the Indian Stamp Act, 1899, as amended by the Bengal Stamp (Amendment) Act, 1922, namely:— II of 1899. Ben Act III of 1922

'Articles 23, 31, 32 (*a*), 32 (*b*) (*i*), 33, 35 [in respect of a fine or premium or money advanced for a lease], 40 (*a*) and 58A

shall, in the case of instruments affecting immovable property situated in the Calcutta Municipality and executed on or after the commencement of this Act, be increased by two per cent. on the value of the property so situated, or (in the case of a mortgage with possession) on the amount secured by the instru- [illegible] in the instrument.'"

Amendment of section 83.

26. In clause (*a*) of the proviso to sub-section (*1*) of section 83 of the said Act before the word "passenger" the words "person in military employ when travelling on duty or by any" shall be inserted.

Amendment of section 88.

27. In section 88 of the said Act—

(*1*) in sub-section (*3*) for the figures "140" the figures and letter "141 E" shall be substituted; and

(*2*) for sub-section (*4*) the following shall be substituted, namely :—

"(*4*) The Corporation may at any time increase, by not more than two per cent., the maximum rate authorized by clause (*a*) of section 147 of the Calcutta Municipal Act, 1899, if they are of opinion that any payment prescribed by sub-section (*1*) or sub-section (*2*) cannot otherwise be made except by an undue curtailment of the expenditure necessary for carrying out the purposes of that Act."

Amendment of section 89.

28. For clause (*a*) of section 89 of the said Act the following shall be substituted, namely :—

"(*a*) meeting expenditure required for the purposes of this Act, or."

Amendment of section 98.

29. In section 98 of the said Act—

(*1*) the words, figures and brackets "subject to the provisions of section 125, sub-section (*2*)", shall be omitted ;

(*2*) for clause (*c*) the following shall be substituted, namely :—

"(*c*) if the Board have, before borrowing money on debentures, reserved, by public notice, a power to pay off the loan by periodical instalments and to select by lot such number of debentures as they may then or thereafter from time to time determine for repayment at such periods as they may then or at any time thereafter fix—then by paying such instalments at such periods, or"; and

(*3*) to the said section the following shall be added, namely :—

"Provided always that if the method described in clause (*c*) be adopted, the approval of the Local Government shall first be obtained to the number of debentures and the periods for repayment determined and fixed from time to time under that clause."

Amendment of sections 105 and 106.

30. In sub-section (*1*) of section 105 and in section 106 of the said Act, for the figures "141" the figures and letter "141G" shall be substituted.

Amendment of section 115.

31. To section 115 of the said Act the following shall be added, namely :—

"and shall be held by the Board in trust for the purposes of this Act subject to the provisions herein contained."

Amendment of section 117.

32. To sub-section (*2*) of section 117 of the said Act the words "unless the Board by an order, general or specific, shall otherwise direct" shall be added.

New section substituted for section 122.

33. For section 122 of the said Act the following shall be substituted, namely:—

"122. There shall be placed to the credit of the Calcutta Improvement Fund—

Credits to Calcutta Improvement Fund.

(*a*) all sums received in pursuance of section 78 or section 79;

(*b*) all moneys received on account of loans taken by the Board under this Act;

(*c*) the proceeds of the sale of any land and all rents of land, vested in the Board;

(*d*) all *premia* received by the Board in connection with leases;

(*e*) the proceeds of the sale of any movable property (including securities, in which the funds of the Board may from time to time be invested);

(*f*) all proceeds received by the Board of taxes imposed under Chapter V;

(*g*) all sums contributed by the Corporation which are received by the Board under section 88;

(*h*) all fines, damages and proceeds of confiscation received by the Board under section 175;

(*i*) all sums received from the Government in aid of the funds of the Board; and

(*j*) all other sums paid to the Board under this Act."

New section substituted for section 123.

34. For section 123 of the said Act the following shall be substituted, namely:—

"123. The moneys credited to the Calcutta Improvement Fund shall be applied to—

Application of moneys credited.

(*a*) the repayment of loans and meeting all charges for interest and sinking fund on account of loans and all other charges incurred in connection with loans;

(*b*) the payment of any salaries, wages, remuneration, fees and allowances, due or made under this Act, payments made under section 75, sub-section (*3*) and the payment of contributions under section 146;

(c) meeting all costs of framing and executing improvement schemes and re-housing schemes;

(d) meeting the cost of acquiring land for carrying out any of the purposes of this Act;

(e) meeting the cost of constructing buildings required for carrying out any of the purposes of this Act:

(f) making payments in pursuance of section 149, otherwise than for interest or for expenses of maintenance or working; and

(g) the payment of any other expenses incurred by the Board in carrying out the purposes of this Act."

New section substituted for section 125.

35. For section 125 of the said Act the following shall be substituted, namely:—

"125. Subject to the maintenance of a closing balance of one lakh of rupees, and unless the Local Government otherwise direct, the Board may invest any surplus moneys, not required for the purposes of this Act, in the manner prescribed in section 101, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act."

Investment of surplus moneys.

Amendment of section 126.

36. In section 126 of the said Act the word, figure and brackets "sub-section (2)" shall be omitted, and for the words "that sub-section" the words "that section" shall be substituted.

New section substituted for section 129.

37. For section 129 the following shall be substituted, namely:—

"129. The Board shall submit to the Local Government—

Submission of accounts to Local Government.

(a) at the end of each half of every financial year, an abstract of the accounts of their receipts and expenditure, and

(b) after the completion of every improvement scheme, an account of all receipts and expenditure on account of such scheme, so as to show its net and gross cost."

Amendment of section 137.

38. For clause (4) of section 137 of the said Act the following shall be substituted, namely:—

"(4) for prescribing the form of the abstracts of accounts referred to in clause (a) of section 129 and section 136 and of the accounts referred to in clause (b) of section 129."

Amendment of section 138.

39. To sub-section *(2)* of section 138 of the said Act the following shall be added, namely:— [Cf. Ben. Act III of 1899, s. 559 (18).]

"and

(*h*) prohibiting or regulating the placing of obstructions, projections or encroachments or the depositing of materials, goods or other things or the tethering of animals in a street vested in the Board, or in or over any drain in any such street, or on any land vested in the Board."

Amendment of section 171.

40. In section 171 of the said Act, after the word "building", where it first occurs, the words and brackets "(not being a hut)" shall be inserted.

Amendment of section 5 of the Schedule.

41. In section 5 of the Schedule to the said Act, for the words "upon payment of the cost of acquisition" in section 17A of the Land Acquisition Act, 1894, the words "upon taking possession of the land, forthwith" shall be substituted.

Amendment of section 13 of the Schedule.

42. In section 13 of the Schedule to the said Act, to sub-section *(1)* of section 48A of the Land Acquisition Act, 1894, the following shall be added, namely:—

"Provided that no compensation shall be payable if the proceedings of the Collector are stayed under section 78 of the Calcutta Improvement Act, 1911."

STATEMENT OF OBJECTS AND REASONS.

Proposals to amend the Calcutta Improvement Act, 1911 (Bengal Act V of 1911), were first raised in consequence of the judgment of Mukharji and Cuming, JJ. *in re* Calcutta Improvement Trust *versus* Chandra Kanta Ghosh, holding that the compulsory acquisition of surplus land for recoupment purposes, was not authorized by the Act. A contrary view was taken in a similar injunction suit brought against the Board to restrain it from the acquisition of surplus lands, by a Full Bench of the High Court, and the judgment of Mukharji and Cuming, JJ., was subsequently reversed by the Privy Council.

The amendment of section 42 of the Act might, therefore, appear to be no longer necessary. Other legal difficulties have, however, arisen in administering the Act. The legality of executing improvement schemes in the suburban area outside Municipal Calcutta, unless they are connected with or subserve schemes undertaken in Calcutta, has been questioned. It has again been doubted whether the Trust could provide open spaces as a principal item of improvement instead of merely as a subsidiary part of a general or street improvement scheme. There is reason to believe that the legal powers of the Board do not fall short of those, which the Legislature, as the Council debates indicate, intended to vest in that body, but it is obviously most desirable that any doubts which may still exist, should be definitely removed.

2. The draft Bill in the first place aims at placing the power of the Board to operate in the suburbs and environs of Calcutta beyond all doubt. It was originally intended that the Bill should make specific provision for the improvement of Howrah, but it has now been decided to create a special Trust for Howrah by a separate Bill.

3. Sections 36 *et seq.* have been re-drafted. It has been found that in actually working the Act, no hard-and-fast line can be drawn between a "general improvement scheme" and a "street scheme." The first scheme undertaken by the Trust was styled a "general improvement scheme"; all subsequent schemes have been designated "street schemes." In a city like Calcutta in which building sites are frequently irregular and ill-adapted for their purpose, the opening up of a main thoroughfare inevitably involves the relaying out of a considerable area in the vicinity of the new main artery, and the "street scheme" thus exhibits all the characteristics of a general improvement scheme. This distinction which, so far as Calcutta conditions are concerned, has proved artificial, has, therefore, been abandoned, and the drafting of the important sections of Chapter III has in consequence been simplified. The right of the Corporation to make an official representation is, as before, confined to the case of insanitary areas, whereas the Trust may frame an improvement scheme for any area. The purposes for which an improvement scheme may provide, correspond in the main with those already referred to in the present Act; the Bill, however, permits the provision of open spaces being made the main or principal item of an improvement scheme instead of being merely subsidiary thereto.

4. It is proposed that there should be two distinct stages, covering first, the preparation of preliminary plans and estimates for an improvement scheme, and secondly their final adoption. Preliminary plans and estimates will be submitted as at present to the Local Government, and on receiving their approval, will be forwarded to the Corporation, with detailed engineering plans and specifications for the approval of that body. It will be for the Corporation and the Board to discuss these questions of technical detail, and in the event of their agreement, the plans and estimates will stand finally approved. In the event of a difference of opinion between these two bodies, the orders of the Local Government will be obtained. At present, the General Committee considers the engineering plans and reports to the Corporation; it is considered desirable that in future the plans and estimates should go direct to the Corporation, which would naturally not consider them, until they had been first examined by the Works Committee. The General Committee will, moreover, cease to exist on the enactment of the

Calcutta Municipal Bill, 1921, which is likely to come into force before the present Bill. There has been some difference of opinion between the Corporation and the Board as to the exact liabilities or obligations, which section 65 of the Act imposes upon the Board. The section has been re-drafted so as to provide for the Board supplying such lighting and water-supply adjuncts or apparatus, as the Corporation would themselves ordinarily provide in a street which they had constructed. Provision has also been made for a section of a street being made over to the Corporation under section 65 before the whole thoroughfare included within the scheme has been completed.

5. The words "authorized to acquire" in section 68 when read with section 69 are somewhat ambiguous. The two sections have been combined in one section, to show that the Board may acquire by agreement any land which they may compulsorily acquire.

6. It frequently happens that one of the assessors of the Tribunal is temporarily absent on account of illness or other unavoidable causes; it may, again, sometimes be undesirable that an assessor who is interested in any property in respect of which an order has to be made, should sit on the Tribunal when it is hearing the case. It is suggested that a small panel of qualified persons should be appointed—half of them to be nominated by the Corporation—from whom the Local Government might, without any loss of time, appoint a person to act in place of any assessor, who for one of the reasons already stated may be unable to sit on the bench. It is provided that only a member of the panel who has been nominated by the Corporation, should be appointed in place of the assessor appointed by that body.

7. At present the office rent, contingent expenses, etc., of the President of the Tribunal are paid by the Board and are audited as part of the expenditure of the Board. It is suggested that this procedure has the appearance of depriving the President of his proper independence, and it is therefore, proposed that the President of the Tribunal should each year submit to the Local Government an estimate of his expenditure, which the Local Government may sanction with such modifications as they think necessary, after considering any representation which the Board may make. The Board would then be required to make payments from time to time to the President of the Tribunal, for disbursement in accordance with the sanctioned estimates.

8. Some changes are made in section 78. At present the fees or commutation payments are payable at dates which vary according to the accident of the order in which the Collector takes up the cases; the result is that those owners whose cases are taken up first, are required to make their payments at an earlier date than the more fortunate persons, whose cases are decided later. Under the present Bill, the fee will be payable or the agreement will have to be executed, by a date to be fixed for each scheme by the Local Government, such date to be not less than 4 years from the publication of the notification under section 6 of the Land Acquisition Act. Owners will thus be in a better position to judge whether it is worth their while to pay the exemption fee; it will also be easy on or before the date fixed as above to ascertain the exact area of the land acquired and the land abandoned, which at present it is often impossible to do, as exemption fees are fixed before the line of road has been laid down on the ground. The new section 78 also leaves it open to the Board to arrange with the owner for the payment of the exemption fee by equated annual payments or otherwise; such elasticity will certainly be popular with land-owners.

9. The meaning of section 81 is admittedly uncertain. The Committee recommend that the Act should be amended so as to provide that whenever the Board decide to sell or lease any land they shall, unless they consider that to do so would be detrimental to the carrying out of the purposes of the Act, offer a prior right to take on lease or purchase such land to any person, who formerly had any interest in such land and who, in the opinion of the Board, has a preponderating claim to such land, or if it appears to the Board that no person has such preponderating claim, shall put to auction the right to take on lease or purchase such land among all persons who, previous to its acquisition, had interests in any portion of such land greater than a lease for years having seven years to run.

10. It is proposed to excise from the Act as unnecessary and responsible for confusion sections 120, 121, 124, 127 and 128, which provide for the maintenance of separate Capital and Revenue accounts. The Board has been given a certain sum of money to be spent on works of improvement and, so far as the basis of its finance is concerned, it is immaterial whether its income accrues year by year or is presented to the Trust in a single lump sum. These sections have accordingly been omitted, and the necessary consequential amendments made in sections 122 and 123.

SURENDRA NATH BANERJEA,

Member-in-charge.

CALCUTTA;

The 24th January, 1923.

NOTES ON CLAUSES.

Clause 2.—The object of the alteration in the long title and in the preamble to the Act, contained in sub-clause (*2*) of this clause is to make it clear that the Board is to have power to operate in the suburbs and environs of Calcutta.

The proposed addition to the preamble in sub-clause (*2*) of this clause is considered necessary, since the recitals in the preamble in regard to the previous sanction of the Governor-General relate to sanctions granted under enactments which have been subsequently repealed by the Government of India Act.

Clause 3.—The repeal of clause (*f*) of section 2 mentioned in sub-clause (*a*) of clause 3 is owing to the abandonment of the distinction between a general improvement scheme and a street scheme. Sub-clause (*c*) of this clause provides for the repeal of sections 39, 40, 42, 51, 52, 66, 68, 120, 121, 124, 127 and 128 and certain other portions of the Act. It is proposed to repeal sections 39, 40 and 51 owing to the abandonment of the distinction between general improvement schemes and street schemes. The necessary portions of section 39 are reproduced in the new section 36 in clause 8. Section 40 merely states the obvious principles which should guide the Trust, and it is considered unnecessary to give statutory authority to them, apart from the possibilities of raising legal difficulties. The matters dealt with in section 42 are provided for in the new section 41 in clause 10. Such of the provisions of the repealed section 52 as are required are reproduced in clause (*d*) of the proposed new section 41. Section 66 is unnecessary owing to the omission of the references to the General Committee in the modified section 65 in clause 17. Section 68 has been incorporated with section 69 in clause 18 (*2*) of the Bill, for the reason given in paragraph 5 of the Statement of Objects and Reasons. The deletion of sections 120, 121, 124, 127 and 128 is explained in paragraph 10 of the Statement of Objects and Reasons. The repeal mentioned in sub-clause (*d*) of clause 3 is consequential on the repeal of section 66, and the repeal of portions of section 171A dealt with in sub-clause (*e*) of clause 3 is consequential on the amendment in section 63 (*8*) included in clause 16.

Clause 4.—If the legislature decide to amalgamate the Maniktala Municipality with the Calcutta Municipality, as recommended by the Select Committee on the Calcutta Municipal Bill, 1921, the proposed sub-section (*3*) of section 1 will require modification in this respect.

Clause 5.—The proposed sub-section (*3*) in section 9 follows section 7 (*3*) of the Rangoon Development Trust Act, 1920 (Bur. Act V of 1920). Its object is to prevent the loss of the services of a really useful man as Trustee merely by reason of his disqualification under section 9 (*1*) (*e*).

Clause 6.—Valuable time is often wasted in complying with the provisions of section 27, and it is considered advisable to make the section more elastic, as indicated by the proposed sub-section (*5*), so as to allow the Chairman, on the authority of the Board, to exercise a discretion in the matter of calling for tenders under certain circumstances.

Clause 7.—The object of the amendment in clause (*a*) of section 32 is to make the intention more clear.

Clause 8.—As mentioned in paragraph 3 of the Statement of Objects and Reasons the distinction between a "general improvement scheme" and a "street scheme" has been abandoned in section 36 and other sections in Chapter III. The distinction between the obligatory and optional features of an improvement scheme, has also been given up. The section contains the features of a general improvement scheme and a street scheme, as set out in the existing Act.

Clause 9.—The amendment in sub-sections (*1*), (*2*), and (*3*) of section 38 is merely consequential.

Clause 10.—The wording of clause (*a*) of section 41 has been altered with a view to avoid any difficulties as to the acquisition of surplus lands. In clause (*d*) the words "other than sale or hire" have been omitted, as they unnecessarily limit the operations of the Trust. The clause will now cover re-housing, and it has been amplified in this respect. The expression "poorer classes" has been used instead of "poorer and working classes" as in section 52, which is to be repealed, so as to enable the Trust to provide for the poorer *bhadralok*. Clauses (*g*), (*h*), (*i*), and (*j*) amplify the latter portion of the existing clause (*f*). Clause (*k*) corresponds to clause (*b*) in the existing section 42, which it is proposed to repeal. Clause (*l*) amplifies clause (*b*) of section 42. As regards the proposed new clause (*m*) in section 36 it is considered desirable that power be taken to reserve sites for charitable or public institutions, and it is thought that any abuse of this power, such as the allocation of a site *gratis* to a quasi-public institution, can be avoided, since the Trust will have power to refuse pre-emption under section 81 (*2*) (*b*) in cases where sites are required for public purposes. The new clause (*n*) in section 36, in regard to any other matters, is necessary.

Clause 11.—This clause contains a necessary consequential amendment in clause (*a*) of sub-section (*2*) of section 45.

Clause 12.—The new proviso to sub-section (*1*) of section 47, requires the Board to give sixty days' notice to the parties affected, in cases where modifications in a scheme involve the acquisition of properties which were not to be acquired under the original scheme. As regards the proposed amendment in clause (*a*) of sub-section (*2*) of section 47, it is considered desirable that only preliminary plans should go to Government, and that engineering details should be relegated to the detailed plans prepared after Government sanction is obtained, and be settled between the two bodies directly concerned. The amendment in sub-section (*3*) of section 47 is self-explanatory.

Clause 13.—The new section 49A provides for the preparation by the Board, of detailed plans and estimates to be submitted to the Corporation, but not to the Local Government. The provisions of the existing section 50 will prevent any extensive changes in a scheme sanctioned by Government.

Clause 14.—The alterations in the proviso to section 53 are intended to give more elasticity as to the width of streets required. It is not possible to provide 40 feet roads, nor are they necessary, *e.g.*, in areas laid out with small three *cottah* sites of which one-third remains an open space. For areas so laid out a 20 feet road is probably quite adequate, provided that sufficient 40 feet thoroughfares are provided. The existing proviso (*ii*) has been of no real practical utility, since *mehtars*' passages are not needed where there is a sewerage system. In any case the proposed proviso would meet any rare case which might occur.

Clause 15.—Legal difficulties have arisen as to the interpretation of the words "is required for executing any improvement scheme" in sub-section (*1*) of section 54. The words "for the purposes of such scheme" have therefore been used instead, which will cover acquisition for recoupment. It is considered that all land within the scheme area should be made to contribute to its cost, and that the Corporation should not receive preferential treatment in this respect over private owners. As regards the amended sub-section (*2*) of section 54 it seems desirable to provide for Government deciding any dispute, as to what is required for the purposes of a scheme. It is proposed to omit the word "actual" before the word "loss" in sub-section (*1*) of section 54 because it is considered that except in the case of municipal streets and squares required for executing any improvement scheme, the Corporation should receive the actual market price of the property it surrenders, but the word "actual" has a tendency to limit or restrict the word "loss", and is unnecessary.

Clause 16.—It has been provided that the provisions of sub-section (*8*) of section 63, are not to apply to a hut.

Clauses 17, 18, 19, 20, 21 and 24.—The alterations proposed in sections 65, 69, 72, 75, 78 and 81 are indicated in paragraphs 4, 5, 6, 7, 8 and 9, respectively, of the Statement of Objects and Reasons.

Clauses 22 and 23.—The alterations in sections 79 and 80 are consequential on the changes made in section 78.

Clause 25.—The existing section 82 is ambiguous, and the alterations in sub-section (*1*) of this section are intended to remove this ambiguity by stating the articles in Schedule I of the Indian Stamp Act, 1899, which are covered by the sub-section.

Clause 26.—It is thought desirable to make an exception as regards the terminal tax in favour of persons in military employ when travelling on duty. A similar exemption is allowed by the Municipal Board of Benares in the case of military passengers proceeding to Benares on military duty.

Clause 27.—The amendment in sub-section (*3*) of section 88 merely brings up to date the citation of the section of the Calcutta Municipal Act, 1899, referred to. Sub-section (*4*) of section 88 has been altered with a view to make the intention more clear.

Clause 28.—Clause (*a*) of section 89 has been altered owing to the removal of the distinction between the capital and revenue accounts, and there is no reason why the Board should not use the loans it raises for any of the purposes for which it was created.

Clause 29.—The first amendment in section 98 is consequential. The object of the second and third amendments is to permit of loans being issued current till a certain year, and of repayments by the Board commencing at some earlier period by the issue of debentures under the new clause (*c*), the drawings to be so calculated that the payments on account of interest and re-payment of capital may be the same in each half-year.

Clause 30.—The amendment in sections 105 (*1*) and 106 brings up to date the citation of the section of the Calcutta Municipal Act, 1899, referred to.

Clause 31.—It is considered desirable to make it clear in section 115 that the moneys payable to the Board are to be held by them in trust for the purposes of the Act.

Clause 32.—The alteration in section 117 (*2*) is to meet possible cases where it is not convenient for the payments to be made by cheque.

Clauses 33 and 34.—The reasons for the alterations in sections 122 and 123 are indicated in paragraph 10 of the Statement of Objects and Reasons.

Clause 35.—The new section 125 merely reproduces with slight modifications the provisions of sub-section (*2*) of section 125. The omission of the provisions of sub-section (*1*) is due to the abandonment of the distinction between the revenue and capital accounts.

Clause 36.—The amendment contained in this clause is merely verbal and consequential.

Clause 37.—Section 129 has been amplified by the addition of a provision requiring the Board on the completion of a scheme to submit an account showing its net and gross cost.

Clause 38.—The alterations in section 137 (*4*) are consequential.

Clause 39.—The proposed clause (*h*) in sub-section (*2*) of section 138, which is based on clause (*18*) of section 559 of the Calcutta Municipal Act, 1899, will enable the Board to make rules to prevent encroachments. At present nuisances are caused on the land belonging to the Board, *e.g.*, by *gariwans* tethering their cattle or parking their carts on such land, and the only legal remedy of the Trust is by a civil suit. It is impossible for the Trust to fence in all such lands effectively.

Clause 40.—The amendment in section 171 is consequential on the amendment in section 63 (*8*) contained in clause 16.

Clause 41.—The object of the amendment in section 5 of the Schedule to the Act is to make it clear in section 17A of the Land Acquisition Act, 1894, with reference to the payment of rates, that the transfers from the owner to Government and from the Government to the Board should take place simultaneously.

Clause 42.—The proposed proviso in 48A of the Land Acquisition Act, as modified for the purposes of the Calcutta Improvement Act, is considered necessary, in view of the alterations made in section 78, referred to in paragraph 8 of the Statement of Objects and Reasons.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, APRIL 18, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 996L., dated the 14th April, 1923.—The following Report of the Select Committee on the Calcutta Port (Amendment) Bill, 1923 (with the Bill, as amended by the Committee), is hereby published for general information :—

REPORT OF THE SELECT COMMITTEE ON THE CALCUTTA PORT (AMENDMENT) BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill further to amend the Calcutta Port Act, 1890, was referred, have considered the Bill, and have the honour to submit this, our report, with the Bill, as amended by us, annexed hereto. In reprinting the Bill, all changes made by us have, so far as possible, been underlined.

2. The more important changes are as follows :—

Clause 1.—The usual drafting amendment has been made in clause 1.

Clause 2 (new section 24B, sub-section (2)).—This proposed sub-section as drafted appears to us to be unduly restricted. As in the case of the Bombay Port Trust, the object of the provision is to limit the class of securities in which the Reserve Fund may be invested, and not to compel the investment of the entire amount of this money. Such a course would be inconvenient in working. We have altered this provision so as to make the intention more clear.

We have nothing to suggest in regard to clause 3.

New clause 3 A.—We suggest the insertion of clause 3A, containing a proposed new section 30A, so as to define more clearly the powers of the Commissioners to establish a Provident Fund for their employees and to distinguish between payments out of such Provident Fund and the payment of bonuses based on length of service which may be made to the employees out of the general revenues of the Port Commissioners. It is understood that application will be made to the Government of India for the notification of this Provident Fund under the Indian Provident Funds Act.

Clause 4.—Sub-clause (*b*), that is to say, new clause (*g*) in sub-section (*1*) of section 31 of the Act, has been recast so as to bring it into conformity with the new clause 3 A of the Bill.

Clause 6.—We consider that the powers of the Commissioners to incur expenditure during any one year in excess of the sum sanctioned in the Budget Estimate should be limited to an expenditure of a lakh and-a-half of rupees when such sums can be met from the ascertained savings on the estimate as a whole. We have inserted a provision to this effect.

We do not consider that the other provisions of the Bill as introduced need any amendment.

3 The Bill was published in English in the *Calcutta Gazette* of the 1st November, 1922.

4 We do not consider that the Bill has been so altered as to require re-publication.

5. We recommend that the Bill, as amended by us, be passed.

J. DONALD, *Member in charge.*

A. MARR.

G. N. ROY.

S. C. STUART-WILLIAMS.

S. R. DAS.

FANINDRA LAL DE.

H. S. SUHRAWARDY.

W. L. CAREY.

RESHEE CASE LAW.

THE CALCUTTA PORT (AMENDMENT) BILL, 1923;

(as amended by the Select Committee).

[NOTE.—All alterations made by the Select Committee have, so far as possible, been underlined.]

A

BILL

further to amend the Calcutta Port Act, 1890.

Preamble.

WHEREAS it is expedient further to amend the Calcutta Port Act, 1890, in the manner hereinafter appearing; Ben. Act III of 1890.

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act; 5 & 6, Geo. V, c 61; 6 & 7, Geo. V, c 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Calcutta Port (Amendment) Act, 1923.

New sections 24B and 24C.

2. After section 24A of the Calcutta Port Act, 1890 (hereinafter called the said Act), the following shall be inserted, namely:—

"24B. (*1*) The Commissioners in meeting may, from time to time, set aside such sums out of their revenue surplus, as they think fit, as a reserve fund or funds for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, ship-wreck or other accident or for any other emergency arising in the ordinary conduct of their work under this Act:

Establishment of reserve fund.

Provided that the sums set aside as a reserve fund or funds shall not exceed such amount, annual or in the aggregate, as shall from time to time be prescribed by the Local Government.

(*2*) Such reserve fund or funds may be invested only in the promissory notes and other securities of the Government of India, or in the debentures issued by the Commissioners under this Act."

"24C. (*1*) For the purposes of any investment which the Comissioners are authorised to make by this Act, it shall be lawful for the Commissioners in meeting to reserve and set apart any debentures or securities to be issued by them on account of any loan to which the approval of the Local Government has been given:

Power to reserve debentures or securities for Commissioners.

(*Clauses 3—4.*)

Provided that in the case of any issue offered to the public, the intention so to reserve and set apart such debentures or securities shall have been notified as a condition of the issue of the loan.

(*2*) The issue of any such debentures or securities direct to and in the name of the Commissioners themselves, shall not operate to extinguish or cancel such debentures or securities, but every debenture or security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(*3*) The purchase by the Commissioners or the transfer, assignment or endorsement to the trustees of the sinking fund or the Commissioners, of any debenture or security issued by the Commissioners, shall not operate to extinguish or cancel any such debenture or security, but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred, assigned or endorsed to any other person."

Amendment of section 30.

3. In the proviso to section 30 of the said Act, for the words, letter and brackets "except clause (*g*) thereof" the following shall be substituted, namely:—

"except clauses (*g*) and (*h*) thereof."

Insertion of new section 30A.

3A. After section 30 of the said Act, the following shall be inserted, namely:—

30A. The Commissioners may, with the approval of the Local Government,—

Power to Commissioners to establish a provident fund and to grant long service bonuses.

(*i*) establish a provident fund for the benefit of their officers and servants appointed in accordance with the provisions of this Act, and compel all or any of such officers and servants to contribute to, and make supplementary contributions to, such provident fund and make payments thereout in accordance with the rules of such fund; and

(*ii*) make payments out of their general revenues of bonuses, based on the length of service of the officers and servants appointed in accordance with this Act, to such officers and servants or to the widows or dependent children of such of them as may die while still in the service of the Commissioners.

Amendment of section 31.

4. In section 31 of the said Act,—

(*1*) in sub-section (1)—

(*a*) the word "and" at the end of clause (*f*) shall be omitted;

(*Clauses 5, 6.*)

(*b*) after clause (*f*) the following shall be inserted, namely :—

"(*g*) for prescribing the rates and the conditions under which contributions may be paid by the Commissioners and their officers and servants to the provident fund which may be established under section 30A, and for determining the conditions of payments from the fund and the conditions of payments under clause (*ii*) of section 30A of bonuses based on length of service; and

(*c*) the existing clause (*g*) shall be renumbered as clause (*h*);

(*2*) in sub-section (*2*) for the word, letter and brackets "clause (*g*)" the word, letter and brackets "clause (*h*)" shall be substituted;

(*3*) in sub-section (*3*) for the words, letter and brackets "or clause (*g*)" the following shall be substituted, namely :—

"and under clauses (*g*) and (*h*)."

Amendment of section 71.

5. For sub-section (*1*) of section 71 of the said Act, the following shall be substituted, namely :—

"(*1*) The estimate as sanctioned by the Commissioners shall, not later than the first day of March next following, be submitted to the Local Government, who may, at any time prior to the first day of April next following, either disallow or modify such estimate, or any portion thereof, and return the same for amendment."

New section 72A.

6. After section 72 of the said Act, the following shall be inserted, namely :—

"72A. The Commissioners in meeting shall be at liberty, in any year, to expend, in addition to the sums sanctioned by the estimate for that year as approved by the Local Government,—

Excess expenditure by Commissioners.

(*a*) any sum or sums chargeable to revenue, the expenditure of which shall in their opinion be necessary and which could not reasonably have been anticipated at the time of the preparation of the estimate, if and when such sums are covered by their revenue earnings received up to the time of such expenditure;

(*Clauses 7, 8.*)

(*b*) any sum or sums on any object not included in or estimated for in the estimate, if and when such sums can be met from ascertained savings on the estimate as a whole:

Provided that in pursuance of the provisions of this clause—

(*i*) not more than fifty thousand rupees shall be expended on any one object, and

(*ii*) without the sanction of the Local Government, not more than one lakh and fifty thousand rupees shall be expended in any one year.

The Commissioners shall submit annually to the Local Government a statement of all such expenditure.

New section substituted for section 73.

7. For section 73 of the said Act, the following shall be substituted, namely:—

Adherence to estimate.

"73. Subject to the provisions of section 72A, no sum exceeding twenty thousand rupees shall, except in cases of pressing emergency, be expended by, or on behalf of, the Commissioners unless such sum is included in an estimate at the time in force which has been finally approved by the Local Government."

Amendment of section 74.

8. In section 74 of the said Act, for the words "five thousand rupees" the words "twenty thousand rupees" shall be substituted.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, MAY 16, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1118L., dated the 12th May, 1923.—The following Report of the Select Committee on the Bengal Aerial Ropeways Bill, 1923 (with the Bill, as amended by the Committee), is hereby published for general information :—

REPORT OF THE SELECT COMMITTEE ON THE BENGAL AERIAL ROPEWAYS BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill to authorize, facilitate and regulate the construction and working of aerial ropeways in Bengal was referred, have considered the Bill and have the honour to submit this our report with the Bill, as amended by us, annexed hereto. In reprinting the Bill all changes made by us have, so far as possible, been underlined.

2. We have no remarks to make on the first five clauses of the Bill.

Clause 6, sub-clause (2).—We think that provision should be made in sub-clause (*2*) of clause 6 that the time allowed for submission of objections to draft orders should not be less than two months from the date of the publication of the draft order. It is undesirable that a draft project should be held up longer. At the same time this period will give ample opportunity to persons affected to put in their representations.

Sub-clause (4) (vii).—We have considered the necessity of providing against damage by aerial ropeways to underground workings in mining areas. These ropeways will frequently pass over mining properties and it is just that a promoter, if he wishes to place his line in such manner that it will interfere with the getting of minerals in such areas, shall either compensate the person working such minerals for the loss so occasioned or shall divert his line when it begins to interfere with the working of the minerals. We do not consider that it is necessary to make the Bill cumbrous with the details of compensation or arrangements for diversion in such exceptional cases. Such details are best left to rules which can be modified from time to time by the Local Government in the light of experience.

Clause 7.—We have made a slight drafting amendment in sub-clause *(1)* of this clause.

Clause 11, sub-clause (1).—We have considered the position of Inspectors of Aerial Ropeways. It is possible that at first it may be necessary to combine with other provinces in obtaining the services of qualified Inspectors. The members of the Committee who have had personal experience of the working of these ropeways have pointed out that this is a highly technical subject and that no one is competent to act as an Inspector of these ropeways unless he has very special knowledge. The number of persons in India with that special knowledge is limited. The services of the Inspector should be paid for to some extent by the promoters and we have therefore left it to the Local Government to fix a scale of fees accordingly.

We have no changes to make in clauses 12 to 20.

Clause 21.—With reference to this clause, we regard the procedure for closing an aerial ropeway as liable to misapplication unless very skilled agency is employed in the work of inspection, and owing to the difficulty of obtaining the services of such agency in urgent cases we consider that in addition to the safeguards which we propose in the new clause 40A there should be some provision for enquiry by expert authority if the Local Government think this necessary before a definite order for closing an aerial ropeway is issued. We have provided for this in sub-clause *(1)* of this clause. In sub-clause *(2)* we have given the Government power to frame rules in regard to the re-opening of an aerial ropeway which has been closed, so as to enable an elastic procedure to be adopted in cases where defects have been remedied and the promoter asks for an immediate expert enquiry to enable him to resume business.

Clause 30.—The same difficulty in regard to the stoppage of getting coal or other minerals as is already alluded to with reference to sub-clause *(4)* of clause 6 may arise in cases of temporary occupation of land. In such a case persons engaged in mining are entitled to additional relief and we have provided for this.

Clause 40.—We have inserted sub-clause *(j)* of clause 31 so as to complete the reference to clause 37, the breach of which must carry with it a penalty, and also the new sub-clauses *(dd)*, *(l)* and *(m)* of clause 41(*2*) among the provisions to be applied to private aerial ropeways.

Clause 40A.—We consider that in a highly technical matter of this kind it is necessary that there should be an Advisory Board, to whom Government may be compelled to refer in case of the refusal to sanction a ropeway or in case of the grant of sanction to a ropeway or of an order to close a ropeway. This Board should consist of a Chief Engineer and two expert officers and we have provided for an application for revision of the orders passed in any of these cases being made by the persons affected to the Local Government. The Local Government will then lay the matter before the Advisory Board and will consider the opinion of the Advisory Board before passing orders in revision. Provisions as to the procedure of the Advisory Board have also been inserted in clause 40A, the drafting of which in the main is based on that of the Indian Electricity Act, 1910.

Clause 41.—We have in sub-clause *(ia)* set out the details in regard to the protection which should be afforded to mining properties over which aerial ropeways pass. We have also provided [in sub-clauses *(dd)*, *(l)* and *(m)*] for fees, for procedure in revision and for procedure in respect of the re-opening of an aerial ropeway which has been closed.

3. The Bill was published in English in the *Calcutta Gazette* of the 21st March, 1923.

4. We do not consider that the Bill has been so altered as to require re-publication.

5. We recommend that the Bill, as amended by us, be passed.

SAIYID NAWAB ALI,
Member in charge.

G. G. DEY.

T EMERSON.

A. CHAUDHURI.

SYED NASIM ALI.

H. E. SKINNER.

T. C. CRAWFORD.

W. L. CAREY.*

NOTE.—* Signed subject to any amendments which the Member may later decide to bring forward.

THE BENGAL AERIAL ROPEWAYS BILL, 1923.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

CHAPTER II.

AERIAL ROPEWAYS FOR PUBLIC TRAFFIC.

Procedure and Preliminary Investigations.

Orders authorising the construction of Aerial Ropeways for Public Traffic.

Inspection of Aerial Ropeways for Public Traffic.

Construction and Maintenance of Aeridl Ropeways for Public Traffic.

Working of Aerial Ropeways for Public Traffic.

18. Promoter may fix rates.

19. Duty of promoter to work aerial ropeway without partiality.

20. Reporting of accidents.

21. Power to close and re-open aerial ropeway.

Discontinuance of Aerial Ropeways for Public Traffic.

22. Cessation of powers of promoter on discontinuance of aerial ropeway.

23. Power of removal of aerial ropeway on cessation of promoter's powers.

Purchase of Aerial Ropeways for Public Traffic.

24. Power of Local Government and local authorities to purchase aerial ropeways for public traffic.

25. Power to promoter to sell when option to purchase not exercised and order revoked by consent.

Inability or Insolvency of Promoter.

26. Proceedings in case of inability or insolvency of promoter.

By-laws.

27. Power of promoter to make by-laws.

CHAPTER III.

PRIVATE AERIAL ROPEWAYS FOR CERTAIN PURPOSES.

28. Application for acquisition of land in case of certain private aerial ropeways.

29. Agreement.

30. Temporary occupation of land in case of private aerial ropeway.

CHAPTER IV.

OFFENCES, PENALTIES AND ARREST.

31. Failure of promoter to comply with Act.

32. Unlawfully obstructing promoter in exercise of his powers.

33. Unlawfully interfering with aerial ropeway.

34. Maliciously doing, abetting or attempting to do, acts endangering safety of persons travelling or being upon aerial ropeway.

35. Arrest for offences against certain sections.

CHAPTER V.

SUPPLEMENTARY PROVISIONS.

THE BENGAL AERIAL ROPEWAYS BILL, 1923;

(as amended by the Select Committee.)

[NOTE:—*All changes made by the Select Committee have, so far as possible, been underlined.*]

A BILL

to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal.

Preamble.

WHEREAS it is expedient to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act; (5 and 6, Geo V, c. 61; 6 and 7, Geo V, c 37; 9 and 10, Geo V, c 101.)

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title, local extent and commencement.

1. (*1*) This Act may be called the Bengal Aerial Ropeways Act, 1923;

(*2*) It extends to the whole of Bengal, except the Hill-tracts of Chittagong; and

(*3*) It shall come into force at once:

Provided that it shall come into operation in the Darjeeling district only on such date and subject to such exceptions and modifications as the Governor in Council may, by notification in the *Calcutta Gazette*, direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "aerial ropeway" means an aerial ropeway (or any portion thereof) for the carriage of passengers, animals or goods, and includes all posts, ropes, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to, such aerial ropeway; [*Cf.* Act IX of 1890, s 3(*4*) (*a*) and (*c*)]

(*2*) "carrier" means any vehicle or receptacle hung or suspended from, or hauled by, a rope and used for the carriage of passengers, animals or goods or for any other purpose in connection with the working of an aerial ropeway;

(*3*) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act;

(*4*) "Inspector" means an Inspector of aerial ropeways appointed under this Act;

(*5*) "local authority" means a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, and also includes a Local Board;

The Bengal Aerial Ropeways Bill, 1923.

(Chapter I.—Preliminary.—Chapter II.—Aerial Ropeways for Public Traffic—Procedure and Preliminary Investigations.—Clauses 3, 4.)

(*6*) "order" means an order authorising the construction of an aerial ropeway under this Act;

(*7*) "post" means a post, trestle, standard, strut, stay or other contrivance or part of a contrivance for carrying, suspending or supporting a rope; [Cf. Act XIII of 1885, s. 3(5).]

(*8*) "prescribed" means prescribed by rules made by the Local Government under section 41;

(*9*) "promoter" means—

(*i*) the Local Government,

(*ii*) a local authority,

(*iii*) any person,

(*iv*) any company incorporated under the Indian Companies Act, 1913, or VII of 1913.

(*v*) any railway company as defined in the Indian Railways Act, 1890, IX of 1890.

in whose favour an order has been made under section 7 or under section 28, or on whom the rights and liabilities conferred and imposed on the promoter by this Act, and by rules and orders made under this Act as to the construction, maintenance and use of the aerial ropeway, have devolved or have been imposed by section 40;

(*10*) "rate" includes any fare, charge or other payment for the carriage of passengers, animals or goods on an aerial ropeway; and

(*11*) "rope" includes any cable, wire, rail or way, whether flexible or rigid, for suspending, carrying or hauling a carrier, if any part of such cable, wire, rail or way is carried overhead and is suspended from, or supported on, posts. [Cf. Act XIII of 1885, s. 3(4).]

CHAPTER II.

Aerial Ropeways for Public Traffic.

Procedure and Preliminary Investigations.

Application for concession

3. Every application by an intending promoter other than the Local Government for permission to undertake the necessary preliminary investigations in regard to a proposed aerial ropeway for the public carriage of passengers, animals or goods shall be submitted to the Local Government.

Contents of application.

4. Every such application shall include—

(*a*) a description of the undertaking and of the route to be followed by the proposed aerial ropeway;

(*b*) a description of the system of construction and management and of the advantages to the community to be expected from the ropeway;

(*c*) an estimate of the cost of construction thereof

(*d*) a statement of the estimated working expenses and profits in respect thereof;

The Bengal Aerial Ropeways Bill, 1923.

(*Chapter II.—Procedure and Preliminary Investigations.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Clauses 5, 6.*)

(*e*) a statement of the maximum and minimum rates which it is proposed to charge ;

(*f*) such maps, plans, sections and drawings in connection therewith as the Local Government may require in order to form an idea of the proposal.

Preliminary investigations.

5. Subject to the provisions of this Act, and of section 4 of the Land Acquisition Act, 1894, the Local Government may, at their discretion, accord sanction to the intending promoter to make such surveys as may be necessary, and require him to submit such detailed estimates, plans, sections and specifications and such further information as they may deem necessary for the full consideration of the proposal. I of 1894.

The intending promoter shall not be entitled to claim any compensation from Government for any expense incurred under this section in the event of his application being ultimately refused.

Orders authorising the Construction of Aerial Ropeways for Public Traffic.

Order authorising construction and contents of such order.

6. (*1*) The Local Government may, on application made by any intending promoter, and after due consideration of the details supplied in accordance with section 5, publish in the *Calcutta Gazette* a draft of the proposed order authorising the construction by or on behalf of, such promoter, subject to such restrictions and conditions as the Local Government may think proper, of an aerial ropeway within any specified area or along any specified route—

(*a*) for the public carriage of passengers ;

(*b*) for the public carriage of passengers, animals and goods ; or

(*c*) for the public carriage of animals and goods.

(*2*) A notice shall be published with the draft order stating that any objection or suggestion which any person may desire to make with respect to the proposed order, if submitted to the Local Government within such period, not being less than two months from the date of such publication as may be specified in the notice, will be received and considered.

(*3*) The Local Government shall also cause public notice of the intention to make the order to be given at convenient places within the said area or along the said route, and shall, so far as may be conveniently possible, cause a like notice to be served on every owner or occupier of land over which such route lies, and shall consider any objection or suggestion, with respect to the proposed order, which may be received from any person within the date specified in such notice and decide thereon. [*Cf.* Act I of 1894, s. 9.]

(*4*) The draft of the proposed order may specify—

(*i*) a time within which the capital required for the construction of the aerial ropeway shall be raised ; [*Cf.* Act XI of 1886, s. 7.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Clause 7.)

(*ii*) a time within which the construction shall be commenced;

(*iii*) a time within which the construction shall be completed;

(*iv*) the conditions under which a concession, guarantee or financial assistance may be given by the Local Government or a local authority to the promoter;

(*v*) the rights of purchase by the Local Government or by a local authority;

(*vi*) the conditions relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary;

(*vii*) the conditions relating to the construction of the ropeway over mining properties in accordance with rules made under section 41 and over roads and other public ways of communication except such railways and tramways as are referred to in clause (*a*) of item 5 of Part 1 of Schedule I to the Devolution Rules, and with the previous sanction of the Governor General in Council over such railways and tramways;

(*viii*) the conditions under which the promoter may sell or transfer his rights to the Local Government or to a local authority, company or person;

(*ix*) the conditions under which the ropeway may be taken over by the Local Government to be worked by itself or by a local authority or by a company or person other than the promoter;

(*x*) the motive power to be used on the ropeway and the conditions (if any) on which such power may be used;

(*xi*) the minimum headway to be maintained under different parts of the rope;

(*xii*) the points under the rope at which bridges or guards shall be constructed and maintained;

(*xiii*) the amount of security (if any) to be deposited by the promoter in the event of his application being granted; and

(*xiv*) such other matters as the Local Government may deem necessary.

Final order. **7.** (*1*) If, after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the Local Government are of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, they shall make an order accordingly.

(*2*) Every order authorising the construction of an aerial ropeway for the public carriage of passengers, animals or goods shall be published in the *Calcutta Gazette*, and such publication shall be conclusive proof that the order has been made as required by this section.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Orders authorising the Construction of Aerial Ropeways for Public Traffic.—Inspection of Aerial Ropeways for Public Traffic.—Clauses 8-10.)

Cessation of powers given by an order.

8. If a promoter authorised by an order to construct an aerial ropeway for the public carriage of passengers, animals or goods does not, within the time specified in the order,— [Cf. Ben Act III of 1898, s. 9.]

(*a*) succeed in raising the full amount of capital required for the completion of the ropeway, or

(*b*) substantially commence the construction of the ropeway, or

(*c*) complete the construction thereof,

the powers given to the promoter by such order shall, unless the Local Government prolongs the time so specified, cease to be exercised.

Opening of aerial ropeway to passenger traffic.

9. When the construction of an aerial ropeway has been authorised under this Act, for the public carriage of animals and goods only, the Local Government may, on application made by the promoter, sanction the opening of such ropeway for the public carriage of passengers also.

Inspection of Aerial Ropeways for Public Traffic.

Inspection of aerial ropeway before opening.

10. (*1*) No aerial ropeway intended for the public carriage of passengers, animals or goods shall be opened for any kind of traffic until the Local Government or an Inspector empowered by the Local Government in this behalf has, by an order, sanctioned the opening thereof for that purpose. The sanction of the Local Government under this section shall not be given until an Inspector has, after inspection of the ropeway, reported in writing to the Local Government—

(*a*) that he has made a careful inspection of the ropeway and appurtenances;

(*b*) that the moving and fixed dimensions and other conditions prescribed under sub-section (*4*) of section 6 and sub-section (*1*) of section 7, have been complied with;

(*c*) that the ropeway is sufficiently equipped for the traffic for which it is intended;

(*d*) that the by-laws and rules prescribed by sections 27 and 41 have been duly made, approved and published; and

(*e*) that the ropeway is, in his opinion, fit for public traffic and can be used without danger either to the persons, animals or goods carried thereon, or to the persons employed thereon, or to the general public.

(*2*) The provisions of sub-section (*1*) shall extend to the opening of additional sections of the ropeway, and to deviation lines and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sub-section (*1*) apply or are extended by this sub-section.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Inspection of Aerial Ropeways for Public Traffic.—Construction and Maintenance of Aerial Ropeways for Public Traffic.—Clauses 11-14.)

Appointment and duties of Inspector.

11. (*1*) The Local Government may appoint such persons as they deem fit to be Inspectors of aerial ropeways for the public carriage of passengers, animals or goods, and may fix the fees to be charged to promoters for the performance by Inspectors of their duties under this Act. [*Cf.* Act IX of 1890, s. 4.]

(*2*) It shall be the duty of any such Inspector from time to time to inspect such ropeways, and to determine whether they are maintained in a fit condition and worked with due regard to the convenience and safety of the persons using them and of the general public, and consistently with the provisions of this Act.

Powers of Inspectors.

12. An Inspector shall, for the purpose of any of the duties which he is authorised or required to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and shall, for that purpose, have such powers as may be prescribed. [*Cf.* Act IX of 1890, s. 5.] Act XLV of 1860.

Facilities to afforded Inspector.

13. The promoter, and his servants and agents, shall afford to an Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act, or by rules made thereunder. [*Cf.* Act IX of 1890, s. 6.]

Construction and Maintenance of Aerial Ropeways for Public Traffic.

Authority of promoter to execute all necessary works.

14. (*1*) Subject to the provisions of this Act, and, in the case of immovable property not belonging to the promoter, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a promoter of an aerial ropeway for public traffic may— [*Cf.* Act IX of 1890, s 7.]

(*a*) make such survey as he thinks necessary ;

(*b*) place and maintain posts in or upon any immovable property ; [*Cf.* Act XIII of 1885, s. 10, first para.]

(*c*) suspend and maintain a rope over, along or across any immovable property ;

(*d*) make such bridges, culverts, drains, embankments and roads as may be necessary ; [*Cf.* Act IX of 1890, s. 7(*a*), (*d*) and (*f*).]

(*e*) erect and construct such machinery, offices, stations, warehouses and other buildings, works and conveniences as may be necessary ; and

(*f*) do all other acts necessary for constructing, maintaining, altering, repairing and using the aerial ropeway :

Provided that a promoter may take any action under clause (*b*) or clause (*c*) of this sub-section, notwithstanding the objection of the owner or occupier of the property affected thereby if the Collector, by an order in writing, permits such action. [*Cf.* Act IX of 1910, s. 12(*2*), first proviso.]

(*2*) When making an order under the proviso to sub-section (*1*), the Collector shall fix the amount of compensation or of annual rent or of both which should, in his opinion, be paid by the promoter to the owner of the property affected thereby, or, in the case of immovable property, to the owner or occupier thereof. [*Cf.* Act IX of 1910, s. 12(*3*).]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Construction and Maintenance of Aerial Ropeways for Public Traffic.—Working of Aerial Ropeways for Public Traffic.—Clauses 15-19.)

Temporary entry upon land for repairing or preventing accident.

15. (*1*) A promoter may, at any time, for the purpose of examining, repairing or altering an aerial ropeway for public traffic or of preventing any accident, enter upon any immovable property adjoining such ropeway, and may do all such works as may be necessary for such purpose. [*Cf.* Act IX of 1890, ss. 9 and 10.]

(*2*) In the exercise of the powers conferred by sub-section (*1*), the promoter shall cause as little damage as possible, and compensation shall be paid by him for any damage so caused; and, in a case of dispute as to the amount of such compensation, or the person to whom it shall be paid, the matter shall be referred to the decision of the Collector.

Removal of trees, structures, etc.

16. (*1*) Where any tree standing or lying near an aerial ropeway for public traffic, or where any structure or other object which has been placed or has fallen near any such ropeway subsequently to the issue of an order under section 7 in regard to such ropeway, interrupts or interferes with, or is likely to interrupt or interfere with, the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit. [*Cf.* Act IX of 1910, s. 18(*3*) and (*4*).]

(*2*) When disposing of an application under sub-section (*1*), the Collector shall, in the case of any tree in existence before the construction of the aerial ropeway, award to the person interested in the tree such compensation, if any, as he thinks reasonable, and the Collector may recover the same from the promoter in the same manner as an arrear of land revenue.

Explanation.—For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant.

Orders of Collector subject to revision by Local Government.

17. No suit shall lie, in respect of any matter referred to in the proviso to sub-section (*1*) of section 14, sub-section (*2*) of section 14, section 15 or sub-section (*1*) of section 16, but every order made by a Collector under any of those sections, and every award made by him under sub-section (*2*) of section 16, shall be subject to revision by the Local Government. [*Cf.* Act IX of 1890, s. 10(*2*), and Act IX of 1910, s. 12(*4*).]

Working of Aerial Ropeways for Public Traffic.

Promoter may fix rates.

18. The promoter of an aerial ropeway for public traffic shall, for the purposes of working an aerial ropeway, and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix the rates for the carriage of passengers, animals or goods on the aerial ropeway. [*Cf.* Ben. Act III of 1883, s. 24.]

Duty of promoter to work aerial ropeway without partiality.

19. No promoter shall, for the purposes of working an aerial ropeway for public traffic, make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in any respect whatsoever, or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [*Cf.* Act IX of 1890, s. 42 (*2*).]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Working of Aerial Ropeways for Public Traffic.—Discontinuance of Aerial Ropeways for Public Traffic.—Clauses 20-22.)

Reporting of accidents.

20. When any of the following accidents occur in the course of working an aerial ropeway for public traffic, namely :— [Cf. Act IX of 1890, s. 83.]

(*a*) any accident attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; Act XLV of 1860.

(*b*) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property;

(*c*) any accident of any other description which the Local Government may notify in this behalf in the *Calcutta Gazette;*

the promoter shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector of the aerial ropeway;

and the promoter's servant in charge of the station on the aerial ropeway nearest to the place at which the accident occurred or, where there is no station, the promoter's servant in charge of the section of the aerial ropeway on which the accident occurred shall, with the least possible delay, give notice of the accident to the Magistrate of the district in which the accident occurred and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Local Government may appoint in this behalf.

Power to close and re-open aerial ropeway.

21. (*1*) If, after inspecting any aerial ropeway opened to public traffic, an Inspector is of opinion that the ropeway or any specified part thereof cannot be used without danger to the public, or is no longer in a fit state for the carriage of any specified class of traffic, he shall state that opinion, together with the grounds therefor, to the Local Government; [Cf. Act IX of 1890, ss. 23 and 24.]

and the Local Government, after such further inquiry, if any, as they may think fit, may thereupon order that, for reasons to be set forth in the order, the aerial ropeway, or the part thereof so specified, be closed to all traffic or to any specified class of traffic:

Provided that, in any case of extreme urgency, the Inspector may order the suspension of the working of the ropeway or any part thereof which he considers necessary, pending the orders of the Local Government on the case.

(*2*) When, under sub-section (*1*), an aerial ropeway or any part thereof has been closed to any traffic, it shall not be re-opened to such traffic until it has been inspected, and its re-opening sanctioned, in the prescribed manner.

Discontinuance of Aerial Ropeways for Public Traffic.

Cessation of powers of promoter on discontinuance of aerial ropeway.

22. If, at any time after the opening of an aerial ropeway for public traffic, it is proved to the satisfaction of the Local Government that the promoter has, [Cf. Ben. Act III of 1883, s. 39.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Discontinuance of Aerial Ropeways for Public Traffic.—Purchase of Aerial Ropeways for Public Traffic.—Clauses 23, 24.)

for three months, discontinued the working of the ropeway or of any part thereof, without a reason sufficient, in the opinion of the Local Government, to warrant such discontinuance, the Local Government, if they think fit, may declare that the powers of the promoter in respect of such aerial ropeway or part thereof shall be at an end; and thereupon the said powers shall cease and determine.

Power of removal of aerial ropeway on cessation of promoter's powers.

23. (*1*) When a declaration has been made under section 22, in respect of any aerial ropeway or of any part thereof, an officer appointed in that behalf by the Local Government may, at any time after the expiration of two months from the date determined as aforesaid, remove such aerial ropeway or part thereof, as the case may be ; [*Cf.* Ben. Act III of 1888, s. 89.]

and the promoter shall pay to the officer so appointed such costs of removal as shall be certified by that officer to have been incurred by him.

(*2*) If the promoter fails to pay the amount of costs so certified within one month after the delivery to him of the certificate or of a copy thereof, such officer may, without any previous notice to the promoter and without prejudice to any other remedy which he may have for the recovery of the said amount, sell and dispose of the materials of the aerial ropeway or part thereof so removed ;

and may, out of the proceeds of the sale, pay and reimburse himself the amount of costs certified as aforesaid and of the costs of the sale ;

and shall pay over the residue (if any) of such proceeds to the promoter.

Purchase of Aerial Ropeways for Public Traffic.

Power of Local Government and local authorities to purchase aerial ropeways for public traffic.

24. (*1*) When an order under section 7 has been made in favour of a promoter of an aerial ropeway for public traffic, not being the Local Government, or a local authority, the Local Government, or a local authority specified in the order published under section 7, shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in such order, have the option of purchasing the undertaking, and if the Local Government, or the local authority with the previous sanction of the Local Government, elect to purchase, the promoter shall sell the undertaking to the Local Government or to the local authority as the case may be, on payment of the value of all lands, buildings, works, materials, plant and apparatus of the promoter, suitable to, and used by him for the purposes of, the undertaking, such value to be in case of difference or dispute determined by arbitration : [*Cf.* Act IX of 1910, s. 7.]

Provided that the value of such lands, buildings, works, materials, plant and apparatus shall be deemed to be their fair market value at the time of purchase,

The Bengal Aerial Ropeways Bill, 1923.

(*Chapter II.—Purchase of Aerial Ropeways for Public Traffic.—Clause 25.*)

due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, plant and apparatus, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking :

Provided also that there shall be added to such value, as aforesaid, such percentage, if any, not exceeding twenty *per cent.* of that value, as may be specified in the order passed under section 7, on account of compulsory purchase.

(*2*) Where a purchase has been effected under sub-section (*1*)—

(*a*) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the promoter or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(*b*) save as aforesaid, the order published under section 7 shall remain in full force, and the purchaser shall be deemed to be the promoter :

Provided that where the Local Government elects to purchase, the order under section 7 shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation.

(*3*) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the promoter by the Local Government or the local authority, as the case may be.

(*4*) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Local Government, waive its option to purchase, and enter into an agreement with the promoter for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (*1*) upon such terms and conditions as may be stated in the agreement.

Power to promoter to sell when option to purchase not exercised and order revoked by consent.

25. Where, on the expiration of any of the periods referred to in section 24, neither the Local Government nor a local authority purchases the undertaking, and the order published under section 7 is, on the application or with the consent of the promoter, revoked, the promoter shall have the option of disposing of all lands, buildings, works, materials, plant and apparatus belonging to the undertaking in such manner as he may think fit. [*Cf.* Act IX of 1910, s. 8.]

The Bengal Aerial Ropeways Bill, 1923.

(Chapter II.—Inability or Insolvency of Promoter.—By-laws.—Clauses 26, 27.)

Inability or Insolvency of Promoter.

Proceedings in case of inability or insolvency of promoter.

26. (*1*) If, at any time after the opening of an aerial ropeway for public traffic, it appears to the Local Government that the promoter is insolvent or is unable to maintain the ropeway, or to work the same with advantage to the public, or at all, the Local Government may declare that the powers of the promoter, in respect of such aerial ropeway, shall, at the expiration of six months from the date of such declaration, be at an end; and thereupon the said powers shall, at the expiration of that period, cease and determine. [Cf. Ben. Act III of 1888, s 40.]

(*2*) At any time after the expiration of the said six months, an officer appointed by the Local Government in that behalf, may, notwithstanding anything contained in the Provincial Insolvency Act, 1920, remove the aerial ropeway in the same manner and subject to the same provisions as to the payment of costs and to the same remedy for the recovery thereof, in every respect, as in cases of removal under section 23. V of 1920.

By-laws.

Power of promoter to make by-laws

27. (*1*) A promoter of an aerial ropeway for public traffic shall, subject to the provisions of sub-section (*3*), make by-laws— [Cf. Act IX of 1890, s. 47.]

(*a*) for regulating the rate of speed at which carriers are to be moved or propelled;

(*b*) for declaring what shall be deemed to be dangerous or offensive goods, and for regulating the carriage of such goods;

(*c*) for regulating the maximum number of passengers and animals, and the maximum weight of goods, to be carried in each carrier;

(*d*) for regulating the use of steam-power, or any other mechanical power or electrical power, on the aerial ropeway;

(*e*) for regulating the conduct of the promoter's servants;

(*f*) for regulating the terms and conditions on which the promoter will warehouse or retain goods at any station on behalf of the consignee or owner of such goods; and

(*g*) generally for regulating the travelling upon, and the use, working and management of, the aerial ropeway.

(*2*) Such by-laws may provide that any person who contravenes the provisions of any of them shall be liable to fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a breach of a by-law made under clause (*e*) of sub-section (*1*), the promoter's servant responsible for the same shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the promoter from his pay.

(*3*) A by-law made under this section shall not take effect until it has been confirmed by the Local Government and published in the *Calcutta Gazette*:

Provided that no such by-law shall be so confirmed until it has been previously published by the promoter in such manner as may be prescribed.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Clauses 28, 29.)

CHAPTER III.

Private Aerial Ropeways for certain purposes.

Application for acquisition of land in case of certain private aerial ropeways.

28. Where the Local Government are satisfied that the construction, extension, working or management of an aerial ropeway for private traffic is likely to prove useful to the public by reason of its facilitating the transport of commodities of general utility or required for the conservation of undertakings supplying those commodities, and where the intending promoter of such aerial ropeway is desirous of obtaining any land for the purpose of such construction, extension, working or management, the Local Government may, on the application of such promoter, acquire on his behalf such land under the provisions of Part VII of the Land Acquisition Act, 1894, or procure the temporary occupation of the same under the provisions of Part VI of that Act, whether the said intending promoter is or is not a company as defined in that Act. I of 1894

Agreement.

29. (*1*) No order shall be made by the Local Government under section 28 until an inquiry has been held as hereinafter provided and the intending promoter has entered into an agreement with the Government in respect of the matters mentioned in sub-section (*4*).

(*2*) Such inquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(*3*) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court. Act V of 1908.

(*4*) Such officer shall report to the Local Government the result of the inquiry, and if the Local Government are satisfied that the ropeway is or is likely to be useful to the public, they shall, subject to any rules made under section 41, require the intending promoter to enter into an agreement with the Government, providing to the satisfaction of the Local Government for the following matters, namely:—

(*a*) the terms on which the ropeway shall be held by the promoter;

(*b*) the time within which, and the conditions on which, the ropeway shall be constructed, maintained and used.

(*5*) Every such agreement shall, as soon as may be after its execution, be published in the *Calcutta Gazette*.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter III.—Private Aerial Ropeways for certain purposes.—Clause 30.—Chapter IV.—Offences, Penalties and Arrest.—Clauses 30, 31.)

Temporary occupation of land in case of private aerial ropeway.

30. If land is to be occupied temporarily in accordance with the provisions of section 28 on behalf of the promoter of an aerial ropeway for private traffic, and if the Local Government on the application of the promoter so direct, then the provisions of Part VI of the Land Acquisition Act, 1894, shall apply to such occupation, subject to the provisions that, notwithstanding anything contained in section 35 of the Land Acquisition Act, 1894, the occupation and use by the promoter of the land occupied shall continue for such period, not exceeding ten years, as the Local Government may fix, and that the compensation payable to the persons interested in such land shall be fixed with due regard to any additional loss or inconvenience caused to them by reason of such period of occupation, including loss caused by the interruption of the getting of minerals by reason of such occupation.

I of 1894.

CHAPTER IV.

Offences, Penalties and Arrest.

Failure of promoter to comply with Act.

[Cf. Act XI of 1886, s. 27, and Ben. Act III of 1888, s. 29.]

31. If a promoter of an aerial ropeway for public traffic—

(*a*) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under section 7, or

(*b*) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of section 10, or

(*c*) fails to comply with the provisions of section 13, or

(*d*) fails to pay within a reasonable time any compensation awarded by the Collector or by the Local Government under section 14, 15, 16 or 17, or

(*e*) contravenes any of the provisions of section 19, or

(*f*) fails to send notice of any accident as required by section 20, or

(*g*) fails to close an aerial ropeway in accordance with an order passed under sub-section (*1*) of section 21, or re-opens any aerial ropeway in contravention of sub-section (*2*) of that section, or

(*h*) continues to exercise the powers of a promoter in respect of any aerial ropeway, in contravention of the provisions of section 22 or section 26, or

(*i*) fails to comply with the provisions of section 27 or section 36, or

(*j*) contravenes any of the provisions of section 37, or

(*k*) contravenes the provisions of any rule made under section 41,

The Bengal Aerial Ropeways Bill, 1923.

(Chapter IV.—Offences, Penalties and Arrest.—Clauses 32-35.)

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act, or of any other remedy which may be obtained against him) be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

Unlawfully obstructing promoter in exercise of his powers. [Cf. Act XI of 1886, s. 28.]

32. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing, maintaining, altering, repairing or working an aerial ropeway, or injures or destroys any mark made for the purpose of setting out the line or route of such ropeway, he shall be punished with fine which may extend to two hundred rupees.

Unlawfully interfering with aerial ropeway. [Cf. Act XI of 1886, s. 29.]

33. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully does any of the following things, namely:—

(*a*) interferes with, removes or alters any part of an aerial ropeway or of the works connected therewith,

(*b*) does anything in such a manner as to obstruct any carrier travelling on an aerial ropeway,

(*c*) attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (*a*) or clause (*b*), Act XLV of 1860.

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punishable with fine which may extend to two hundred rupees.

Maliciously doing, abetting or attempting to do, acts endangering safety of persons travelling or being upon aerial ropeway. [Cf. Act IX of 1890, s. 126.] Act XLV of 1860.

34. If any person does anything mentioned in clause (*a*), (*b*) or (*c*) of section 33 or does, attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of any other act or thing in relation to an aerial ropeway with intent or with knowledge that he is likely to endanger the safety of any person travelling or being upon the aerial ropeway, he shall be punished with imprisonment for a term which may extend to fourteen years.

Arrest for offences against certain sections. [Cf. Act IX of 1890, s. 131.]

35. (*1*) If any person commits any offence under section 32 which obstructs the working of an aerial ropeway for public traffic, or commits any offence punishable with imprisonment under section 34, he may be arrested without warrant or other written authority by any servant of the promoter, or by any police-officer or by any other person whom such servant or officer may call to his aid.

(*2*) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or to commit him for trial.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter V.—Supplementary Provisions.—Clauses 36—40.)

CHAPTER V.

Supplementary Provisions.

Returns.

36. A promoter of an aerial ropeway for public traffic shall, in respect of such ropeway, submit to the Local Government returns of capital, receipts and traffic at such intervals and in such forms as may be prescribed. [*Cf.* Act IX of 1890, s. 52.]

Protection of roads, railways, tramways and waterways

37. No promoter of an aerial ropeway shall, in the course of the construction, repair, working or management of such ropeway, cause any permanent injury to any public road, railway, tramway or waterway, or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway, tramway or waterway. [*Cf.* Act IX of 1910, s. 81.]

Acquisition of land by a promoter

38. The Local Government may, if they think fit, on the application of any promoter of an aerial ropeway for public traffic desirous of obtaining any land for the purpose of constructing, working or managing such ropeway, direct that he may, subject to the provisions of this Act, acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the promoter were a company. [*Cf.* Act IX of 1910, s. 57(2).] I of 1894

Limitation of claims for damage to animals or goods

39. No person shall be entitled to a refund of an overcharge in respect of animals or goods carried by an aerial ropeway for public traffic or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the promoter within six months from the date of the delivery of the animals or goods for carriage by the ropeway.

Application of Act to certain private aerial ropeways.

40. *(1)* Sections 1, 2, 11, 12, 13, 14, 15, 16, 20 and 21, clauses (*c*), (*f*), (*g*), (*j*) and (*k*) of section 31, sections 34, 35 and 37, and sub-sections *(1)* and *(3)* and clauses (*a*), (*b*), (*d*), (*dd*), (*i*), (*k*), (*l*), and (*m*) of sub-section *(2)* of section 41 shall also apply to the private aerial ropeways constructed for the purposes referred to in section 28, whether constructed before or after the commencement of this Act:

Provided that, in the application of section 16 to any such aerial ropeway, for the words "the issue of an order under section 7" the words "the opening of the ropeway to traffic or the issue of a notification for the açquisition of, or an order for the temporary occupation of, land in accordance with the provisions of section 28, whichever is earlier," shall be deemed to be substituted.

(2) Clauses (*a*), (*c*) and (*e*) of sub-section *(1)* and sub-section *(2)* of section 10 shall also apply to all such private aerial ropeways constructed after the commencement of this Act, and clause (*b*) of section 31 shall apply to such ropeways to the extent that section 10 applies thereto.

The Bengal Aerial Ropeways Bill, 1923.

(Chapter V.—Supplementary Provisions.—Clauses, 40A, 41.)

(3) The Local Government, on the application of the promoter or otherwise, may declare that the provisions of section 28 and of sub-section (1) of this section shall apply to any private aerial ropeway or class of private aerial ropeways for private traffic.

Power of Local Government to constitute an Advisory Board for aerial ropeways.

40A. (1) The Local Government shall, by notification in the *Calcutta Gazette*, constitute an Advisory Board for aerial ropeways.

(2) Such Board shall consist of a Chairman to be appointed by the Local Government (who shall be a Chief Engineer to the Local Government) and two persons to be appointed by the Local Government as expert members.

(3) When any person is aggrieved by an order of the Local Government under section 7 or under section 21, such person, on payment of the prescribed fees, may, within thirty days of the said order, apply to the Local Government for revision of the same, and the Local Government shall take the advice of the Advisory Board in the prescribed manner and shall consider such advice and pass such orders in the matter as to the Local Government shall seem just and proper.

(4) With a view to enabling the Board to tender their advice under sub-section (3) the Board, with the consent of the Local Government and on payment of such further fees as may be prescribed, may make such further enquiry into the matter as the Board may consider to be necessary.

(5) The Local Government may, by general or special order,—

(a) define the further duties of, and regulate the procedure of, the Advisory Board,

(b) determine the tenure of office of the members of the Board; and

(c) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of such Board in the performance of his duty.

Power of Local Government to make rules.

41. (1) The Local Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(ia) the conditions under which licenses for the construction of aerial ropeways over mining properties shall be granted, (including conditions as to the assessment and payment of compensation for loss caused by the

The Bengal Aerial Ropeways Bill, 1923.

(Chapter V.—Supplementary Provisions.— Clause 41.)

interruption of the getting of minerals by reason of such construction and conditions as to the removal of any portion of the ropeway to another alignment, to be fixed by arbitration if necessary, if at any time in the opinion of the Local Government the ropeway interferes with the raising of minerals;

(*a*) the powers of an Inspector appointed under section 11;

(*b*) the duties of the promoter's servants, police-officers, and Magistrates on the occurrence of an accident;

(*c*) the maximum and minimum rates which a promoter may fix under section 18;

(*d*) the standard dimensions and specifications with which the aerial ropeway is to conform;

(*dd*) the procedure for the disposal of applications under sub-section (*2*) of section 21 to re-open an aerial ropeway or part thereof and the conditions under which such ropeway may be re-opened.

(*e*) the manner of previous publication of by-laws made under section 27;

(*f*) the intervals at which a promoter shall submit returns under section 36, and the forms in which such returns shall be submitted;

(*g*) the preparation, submission and auditing of the accounts of the promoter;

(*h*) the method of arbitration for the settlement of disputes;

(*i*) the manner in which notices under this Act shall be served;

(*j*) the manner in which, and the conditions under which, the through booking of goods may be permitted between an aerial ropeway and a railway, tramway or another aerial ropeway;

(*k*) the safe and efficient working of aerial ropeways;

(*l*) the fees to be charged to promoters and other persons in respect of licenses, applications, enquiries, inspection, and services rendered under this Act; and

(*m*) the procedure for filing applications for revision under section 40A, for the hearing of such petitions by the Advisory Board and for the taking of the advice of the Board.

(*3*) All rules made under this section shall be published in the *Calcutta Gazette*.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, JUNE 20, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented to that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 575T.L., dated 16th June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information.

It is proposed to introduce the Bill at the session of the Bengal Legislative Council commencing on Monday, the 2nd July, 1923.

THE CALCUTTA MUNICIPAL (No. II) BILL, 1923.

A

BILL

to provide for certain matters in connection with the Budget Estimate of the Corporation of Calcutta for the year 1924-25, the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and the arrangements to be made in connection with the raising of loans during that year, for the fixing of the percentage of the consolidated rate in respect of the added areas during the four succeeding years, and for the amendment of section 20 of the Calcutta Municipal Act, 1923, in respect of the qualification of electors.

Preamble.

WHEREAS it is expedient to give to representatives of the Municipalities which are to be included in Calcutta, under the provisions of the Calcutta Municipal Act, 1923, an opportunity of taking part in the framing and passing of the Budget Estimate of the Corporation of Calcutta for the year 1924-25, in the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and in the arrangements that are to be made for the raising of any loan during that year, and so to provide for the framing and passing of the said Budget Estimate, the fixing of the said rate and the arrangements for the said loans; (Ben. Act III of 1923.)

And whereas it is expedient that the Corporation do fix for the year 1924-25 a favourable percentage in respect of the levy of the consolidated rate on lands and buildings in each of the added areas and that they have power to fix a special percentage in respect of the lands and buildings in any such areas during the four succeeding years;

And whereas it is expedient to amend section 20 of the said Act in respect of the minimum amount to be paid by a person as consolidated rate, tax or rent so as to entitle him to be an elector;

It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Calcutta Municipal (No. II) Act, 1923.

(*2*) It extends to Calcutta as defined in clause (*11*) of section 3 of the Calcutta Municipal Act, 1923.

Manner of preparation and passing of Budget Estimate of the Calcutta Corporation for 1924-25, etc.

2. Notwithstanding anything contained in the Calcutta Municipal Act, 1899, or in the Calcutta Municipal Act, 1923, the Budget Estimate of the Corporation of Calcutta for the year 1924-25 for the purposes of the Calcutta Municipal Act, 1923, shall be prepared and passed, and the rates at which the consolidated (Ben. Act III of 1899. Ben. Act III of 1923.)

(*Clauses 3, 4.*)

rate and the taxes for the said year for the said purposes shall be levied and imposed shall be determined and fixed, and the sums of money, if any, that shall be borrowed in the said year for the said purposes shall be determined, in the manner set forth in sections 3 to 5.

Preparation of Budget Estimate and reference to General Committee.

3. (*1*) The Budget Estimate of income and expenditure for the year 1924-25 of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, shall be prepared with reference to the area specified in Schedule I to that Act and for the purposes of that Act, by the Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and the said Chairman shall, on or before the tenth day of January, 1924, place the same, together with a statement of proposals as to the taxation which it will, in his opinion, be necessary or expedient to impose under the Calcutta Municipal Act, 1923, in the year 1924-25, before the General Committee of the Corporation of Calcutta, as constituted under the Calcutta Municipal Act, 1899.

Ben. Act III of 1923.

Ben. Act III of 1899.

For the purposes of this Act, the General Committee of the Corporation of Calcutta shall, notwithstanding anything contained in the Calcutta Municipal Act, 1899, include the following additional members, namely:—

(*a*) three Commissioners of the Cossipur-Chitpur Municipality, elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924;

(*b*) two Commissioners of the Maniktala Municipality, elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924; and

(*c*) two Commissioners of the Garden Reach Municipality, elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924.

(*2*) The General Committee, as so constituted, shall, on or as soon as may be after the tenth day of February, 1924, consider the estimates and proposals submitted by the Chairman of the Corporation and subject to such modifications and additions therein or thereto as they may think fit, shall prepare a Budget Estimate of income and expenditure of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, for the year 1924-25, and shall propose the levy of the consolidated rate and other taxes for that year at such rates as they may deem necessary.

Passing of Budget Estimate, etc.

4. The Budget Estimate, as finally framed by the said General Committee, together with a statement of proposals as to the taxation which it will, in the opinion of the General Committee, be necessary or expedient to impose under this Act in the year 1924-25, shall be placed before the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, on or before the seventh day of March, 1924, and the said Corporation shall consider, on behalf of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, the said proposals of the General Committee, and in so doing shall apply thereto the provisions of the Calcutta Municipal Act,

(*Clauses 5, 6.*)

1923, so far as in their opinion these can be suitably applied, and shall, on or before the twenty-second day of March, 1924, pass the same Budget Estimate, subject to such further modifications or additions as to them shall appear to be expedient, and shall fix, with reference to the Budget Estimate as so passed, the rates at which the consolidated rate and the taxes mentioned in the Calcutta Municipal Act, 1923, shall be levied and imposed for the year commencing on the 1st day of April, 1924, and the sums of money (if any) which shall be borrowed during the said year for the purposes of the Calcutta Municipal Act, 1923:

Provided that, notwithstanding anything contained in the Calcutta Municipal Act, 1923, the rate at which the consolidated rate shall be levied and imposed in the year 1924-25 in respect of lands and buildings in each one of the several areas, referred to in sub-clauses (*i*) to (*v*) of clause (*1*) of section 3 of that Act, shall be so fixed that the total amount of the consolidated rate that is levied in respect of lands and buildings in that area during that period shall not exceed the total amount of the rate on holdings, the latrine fees, the water and the lighting rates assessed in respect of holdings in that area in the year 1923-24 under Part IV, Part VII, Part VIII and Part IX of the Bengal Municipal Act, 1884.

For the purposes of this section, notwithstanding anything contained in the Calcutta Municipal Act, 1899, the Corporation of Calcutta shall be deemed to include the additional members referred to in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) of section 3.

Validity of Budget Estimate for 1924-25, etc.

5. The Budget Estimate of the Corporation of Calcutta for the year 1924-25, as so passed, and the rates at which the consolidated rate and taxes shall be levied and imposed, as so determined and fixed, and the decision of the Corporation in respect of any loan or loans to be raised, shall, notwithstanding anything contained in the Calcutta Municipal Act, 1923, have for all the purposes of that Act full force and effect in Calcutta as defined in clause (*11*) of section 3 of that Act during the year 1924-25 and— Ben. Act III of 1923.

(*i*) the said Budget Estimate shall be deemed to be the Budget Estimate duly passed,

(*ii*) the consolidated rate and taxes levied and imposed at the rates so determined and fixed shall be deemed to be the consolidated rate and taxes duly levied and imposed, and

(*iii*) the loans, if any, incurred in accordance with the said decision shall be deemed to be loans duly incurred,

by the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1923, unless and until such Budget Estimate, consolidated rate and taxes and decision in regard to loans are added to, modified or varied by that Corporation and in accordance with the provisions of that Act.

Power to Chairman to inspect and take extracts from documents, etc.

6. The Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and any officer of the said Corporation specially empowered by him in this behalf shall from the commencement of this Act and notwithstanding anything contained in the Bengal Municipal Act, 1884, have Ben. Act III of 1899. Ben. Act III of 1884.

(*Clauses 7, 8.*)

power to inspect and take extracts from the assessment books and other records of the Maniktala, Cossipur-Chitpur, Garden Reach and Tollygunge Municipalities for all or any of the purposes of this Act and of the Calcutta Municipal Act, 1923, and the Commissioners of the said Municipalities shall render to the said Chairman and to any such officer all assistance that he may require for the said purposes.

Power to Corporation to fix lower percentage rate for the consolidated rate in respe and buildings in added areas during the years 1925-26 to 1928-29.

7. Notwithstanding anything contained in the Calcutta Mnnicipal Act, 1923, the Corporation, in fixing the rate at which the consolidated rate for any of the years 1925-26, 1926-27, 1927-28 or 1928-29 on lands and buildings in Calcutta generally shall be levied and imposed, may fix, in respect of the lands and buildings in any of the several areas referred to in sub-clauses (*i*) to (*v*) of clause (1) of section 3 of that Act, a rate at a lower percentage on the annual valuation than the percentage which is fixed for that year generally in respect of lands and buildings in Calcutta.

Amendment of section 20 of the Calcutta Municipal Act, 1923.

8. In sub-section (*1*) of section 20 of the Calcutta Municipal Act, 1923,—

(*i*) to the first proviso to clause (*a*) the words "on account of the consolidated rate" shall be added;

(*ii*) in the second proviso to that clause for the words "half-year from the first day of April to" the words "year ending with" and for the words "preparation of the electoral roll" the word "election" shall be substituted;

(*iii*) in clause (*b*) for the words "in which the election takes place, but not later than the 30th of September" the words "ending with the 30th day of September" and for the words "the half-year from the 1st April to the 30th day of September" the words "at least six months during the said year" shall be substituted; and

(*iv*) in clause (*c*) for the words "the year" the words "the said year" and for the words "an entire" the word "the" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

It has been represented that the immediate levy under the Calcutta Municipal Act, 1923, of the consolidated rate at the full percentage on lands and buildings in the areas newly added to Calcutta may cause hardship to the inhabitants of those areas. It is therefore considered that special provision should be made in respect of the consolidated rate that may be levied from those areas during the five years 1924-25 to 1928-29. During the first year (1924-25) it is proposed that the total amount of the consolidated rate to be levied in respect of any one of these areas shall not exceed the sum total of the rate on holdings, the latrine fees, the water rate and the lighting rate levied in respect of the area during the year 1923-24. During the succeeding four years it is proposed that the Corporation do have a discretion to reduce, in respect of any of the added areas, the percentage fixed for the year for the purposes of the levy of the consolidated rate on lands and buildings in Calcutta generally.

It has also been represented that the provisions of the Calcutta Municipal Act, 1923, in regard to the framing of the first Budget so far as that Budget relates to the areas newly added to Calcutta, are insufficient, and that difficulty may arise in regard to the collection of the consolidated rate and taxes for those areas, and that the added areas are entitled to some sort of representation at the time of the framing of the Budget for the year 1924-25. Provision has therefore been made for the preparation of the 1924-25 Budget Estimates of the Corporation of Calcutta by a Special Committee, on which three representatives of the Cossipore-Chitpur Municipality and two representatives of the Maniktala and the Garden Reach Municipalities shall sit together with the members of the General Committee of the Calcutta Corporation. The Budget Estimate as so prepared will be placed before the Corporation and the seven members aforesaid will be added to the Corporation for the purposes of the discussion and passing of the said Budget and the fixing of the consolidated rate and taxes.

In order that the preliminary draft of the Budget for 1924-25 and other preliminary work in connection with the inclusion of the added areas may be undertaken in good time, power is taken under clause 6 of the Bill to the Chairman and his officers to inspect and take extracts from the assessment books and other records relating to the added areas.

Finally, by clause 7 an amendment is made to give effect to the intention of section 20 of the Act as declared by the Hon'ble the Minister in the Council. The final draft does not carry out the intention that the minimum qualification of an elector under clause *(a)* of sub-section *(1)* of section 20 shall be the payment of twelve rupees per annum by way of consolidated rate or taxes. This has now been corrected and the opportunity has been taken to make the drafting of this clause more explicit and homogeneous.

S. N. BANERJEA,
Member in charge.

DARJEELING;
The 8th June, 1923.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, JUNE 27, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented to that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1361L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce and pass the Bill at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923.

THE BENGAL CHILDREN (AMENDMENT) BILL, 1923.

A

BILL

to amend the Bengal Children Act, 1922, with a view to facilitate its early extension to the town and port of Calcutta, the suburbs of Calcutta and Howrah.

Preamble

WHEREAS it is expedient to amend the Bengal Children Act, 1922, in the manner hereinafter appearing; Ben. Act II of 1922

And whereas the previous sanction of the Governor General has been obtained under sub-section (*3*) of section 80A of the Government of India Act to the passing of this Act; 5 & 6, Geo V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Children (Amendment) Act, 1923.

Amendment of section 1 of Bengal Act II of 1922.

2. In sub-section (*2*) of section 1 of the Bengal Children Act, 1922 (hereinafter referred to as the said Act), after the word "force" the words "in whole or in part" shall be inserted and after the word "direct" the words "and for this purpose different dates may be appointed for different provisions of this Act and for different parts of the area defined in sub-section (*3*)" shall be added.

Amendment of section 28.

3. To section 28 of the said Act the following shall be added, namely:—

"(*4*) Notwithstanding anything contained elsewhere in this Act, no order shall be passed sending a child to an industrial school, unless the court is satisfied that accommodation suitable for such child is available."

Amendment of section 37.

4. To section 37 of the said Act the following shall be added, namely:—

"(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a Juvenile Court established for the suburbs of Calcutta, as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, or a Magistrate of the district of the 24-Parganas exercising powers under this Act, may inquire into and try in such place within Calcutta as the Local Government may direct the case of any child or young person who is accused of committing any offence within those suburbs, and such inquiry or trial shall for the purposes of jurisdiction be deemed to be held in the suburbs of Calcutta as so defined.

Any such accused person may be detained, pending trial or on conviction, in any place in Calcutta, which is set apart, under the provisions of this Act or the rules made thereunder, for the reception of children or young persons."

STATEMENT OF OBJECTS AND REASONS.

The Bengal Children Act, 1922, has not yet been extended to the town and port of Calcutta, the suburbs of Calcutta and Howrah, partly owing to the difficulty of obtaining certified industrial schools and partly owing to the financial stringency. There are in Calcutta already a Juvenile remand home and a Juvenile Court in which there is accommodation sufficient to provide for the requirements both of Calcutta and its suburbs, but the Government have been advised that under section 37, as at present framed, it would not be legal in view of section 177 of the Code of Criminal Procedure for the Magistrates of the suburbs, when trying offences arising within their jurisdiction, to sit in that Court, as it is outside their jurisdiction. To avoid, therefore, the large expense which would be necessary in order to create a separate Court and a remand home in the suburbs, it is proposed to take power to permit Magistrates to try within Calcutta cases against children and young persons for offences alleged to have been committed in the suburbs, such trials to be deemed to be trials in the suburbs.

2. There are some clauses in the Act which create offences against children and which will be tried by the ordinary Courts. These could be introduced at once. Other clauses give statutory powers to Probation Officers and provide for placing children and young persons in suitable custody, and these provisions also might be brought in at once. Owing to the difficulty, however, of providing or certifying industrial schools for different communities in Calcutta, it is not possible at present to permit orders to be passed sending children to industrial schools. A house for a Court and remand home has not yet been found in Howrah, and there may have to be delay in extending the Act to it. The Bill therefore provides that different parts of the Act may be brought into force on different dates for different areas, and that orders of detention in industrial schools shall not be passed in respect of any child, unless there is any industrial school certified with suitable accommodation. It is hoped that the different communities will come forward to assist Government on behalf of unfortunate children of their communities by opening industrial schools with Government aid, and thus enable Government to bring the industrial school system fully into force at an early date.

A. RAHIM,
Member-in-charge.

DARJEELING;
The 29th May, 1923.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1362L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce the Bill and to refer it to Select Committee at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923.

THE BENGAL TENANCY (UTBANDI AMENDMENT) BILL, 1923.

A

BILL

to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be fixed for lands held under the custom of Utbandi and to make further provision in respect of such lands.

Preamble.

WHEREAS it is expedient to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money-rent may be fixed for lands held under the custom of *utbandi*, and to make such other provisions as hereinafter appear in respect of lands for which a uniform annual rent has been so fixed;

5 & 6 Geo V., c. 61; 6 & 7 Geo V., c. 37; 9 & 10 Geo. V., c. 101.

And whereas the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Bengal Tenancy (Utbandi Amendment) Act, 1923.

(*2*) It extends to the whole of Bengal.

Insertion of new sections 180A and 180B in Act VIII of 1885.

2. After section 180 of the Bengal Tenancy Act, 1885, the following sections shall be inserted, namely:—

Fixing of uniform annual rent in respect of *utbandi* lands.

"180A. (*1*) Notwithstanding anything contained in section 180 when a raiyat holds or has held land under the custom of *utbandi*, either the landlord or the raiyat may apply to have a uniform annual rent determined for the land.

(*2*) The application shall include at the discretion of the applicant either—

(*a*) all the lands held under the custom of *utbandi* by the same tenant under the same landlord in which the tenant has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(*b*) all the lands held under the same landlord by the tenant which the tenant has cultivated under the custom of *utbandi* at any time during the preceding period of six years if he is the last person to have cultivated the land and has not acquired occupancy rights therein, or

(*c*) both.

(*Clause 2.*)

(*3*) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Local Government.

(*4*) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (*3*) to receive applications.

(*5*) The officer receiving the application or the officer to whom the case is transferred as the case may be shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

(*6*) If the application refers to lands in which the tenant has not acquired occupancy rights, the officer may reject it in whole or in part in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if circumstances have in the meantime changed.

(*7*) If the application is not wholly rejected, the officer shall then determine the sum to be paid as a uniform annual rent, and also in the case of lands in which the tenant has not acquired occupancy rights, a premium to be paid to the landlord, and he shall order that the tenant shall, in lieu of paying the rent under the custom of *utbandi*, pay the sum so determined and the premium, if any.

(*8*) In making the determination of the sum to be paid as rent, the officer shall have regard to—

(*a*) the average money rent payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average of the rents actually paid or payable to the landlord on account of the lands during the previous six years or during any shorter period for which evidence may be available;

(*c*) the rates for lands of a similar description and with similar advantages in the vicinity held under the custom of *utbandi*;

(*Clause 2.*)

(*d*) the rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands under the custom of *utbandi* but whose rents have been converted into uniform annual rents whether under this section or by agreement or otherwise;

(*e*) the charges incurred by the landlord in respect of irrigation under the custom of *utbandi* and the arrangements made on settlement of the uniform annual rent for continuing those charges;

(*f*) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy raiyats;

(*g*) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(*9*) The premium to be paid to the landlord in the case of lands in which the tenant has not acquired occupancy rights shall be three times the rent, or if the application is made under sub-clause (*c*) of sub-section (*2*), three times the portion of the rent determined under sub-section (*7*) on account of such lands:

Provided that the determining officer may, on the application of the tenant, if he considers that it is a hardship to the tenant to pay a premium, commute the same by ordering that, in lieu of the payment of a premium, the uniform annual rent or portion of the rent, as the case may be, on account of the lands in respect of which the premium was so payable, be increased by a sum equal to 20 per cent. of such rent or portion of rent.

(*10*) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(*11*) The officer may, on the application of the tenant, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (*7*) takes effect and that one of remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(*Clause 2.*)

(*12*) The premium or the instalments thereof shall be payable and recoverable as rent, but interest shall only be awarded in respect of such instalments as are not paid by the date fixed under sub-section (*11*).

(*13*) The order shall be subject to appeal in the manner provided in section 109A, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(*14*) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual rent has been fixed under section 180A to cease to be *utbandi* lands.

"180B. Whenever an order under section 180A is passed determining a uniform annual rent for any lands, such lands shall cease to be deemed to be held under the custom of *utbandi* with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy raiyat from the date of the order.

STATEMENT OF OBJECTS AND REASONS.

The *utbandi* tenancy is a peculiar tenancy, mainly confined to the districts of Nadia and Murshidabad. It is not governed by the ordinary law of landlord and tenant but by section 180 of the Bengal Tenancy Act, which retards the acquisition of occupancy rights and restricts the application of ordinary raiyati rights, in any part of the country where the custom of *utbandi* prevails, in lands ordinarily let out under that custom and for the time being let out under that custom. The tenancy has been described as follows: "The holding is not fixed either in area or in position but consists of a variable parcel or parcels of lands ascertained by a measurement or inspection made at least once a year. The rent is fixed for each year or season in respect of the parcel or parcels of land which has been ascertained by the said measurement or inspection to have been during the year or season in question in the cultivation of the raiyat". The system has, however, now largely developed in practice into a species of settled cultivation, in which it is undesirable to restrict the acquisition of ordinary raiyati rights or to retard the acquisition of occupancy rights. A change in the law is therefore called for, and the Committee who were appointed by Government in 1921 to consider the amendment of the Bengal Tenancy Act, 1885, recommended that the law should be so modified as to enable *utbandi* tenancies to be converted into ordinary raiyati holdings by the commutation of *utbandi* rents into ordinary raiyati rents somewhat on the lines of section 40 of the Bengal Tenancy Act. In view also of the fact that the *utbandi* problem is a local one, affecting portions of a few districts only and having little connection with the main principles underlying the general Amendment Bill proposed by them, they recommended that the matter should be dealt with by separate legislation. The present Bill has accordingly been drafted separately on the basis of section 40 of the Bengal Tenancy Act. The notes on clause 2 explain any material departure from that section.

Notes on clause 2.

Section 180A(2).—This deals with the lands which can or must be included in the application for conversion of the *utbandi* rents. It makes provision for the inclusion of lands in which occupancy rights have accrued separately from those in which they have not accrued, because in the second case it may not be equitable to determine any ordinary uniform rent at all, whilst there is no reason in the first case why any application for conversion should be refused. It has also been provided that, in the case of lands in which the raiyat has not acquired occupancy rights, all those lands which the raiyat has cultivated under the same landlord under the custom of *utbandi* at any time during the preceding period of six years, if he is the last person to have cultivated the lands, must be included in the application. This is intended to save the landlord from having the worst lands thrown on his hands by the tenant making a selection only of the best lands he has cultivated during a cycle of cultivation.

Section 180A(4).—This provides for the transfer of the application to another officer for disposal.

Section 180A(5).—This provides for the initial procedure in dealing with the application. It is expected that most applications will be heard locally.

Section 180A(6).—This proposed sub-section provides for the differential treatment of applications relating to lands in which the raiyat has not acquired occupancy rights referred to in the note under proposed sub-section 180A(2).

Section 180A(7).—This proposed sub-section introduces the payment of a premium for conversion in the case of lands in which the raiyat has not acquired occupancy rights. This is warranted by the proposal that under section 180B he should obtain occupancy rights in such lands.

Section 180A (8).—This sub-section deals with the considerations to which the officer determining the sum to be paid as rent shall have regard on the lines of section 40 of the Act. It is also proposed under section 180A (*8*) (*d*) that other rents which have been converted into uniform annual rents should be taken into consideration. Further, in view of the fact that *utbandi* rents are money-rents, and not the produce-rents contemplated by section 40, it is proposed in sub-section 180A (*8*) (*f*) that regard should be had to the rules laid down in this Act for the guidance of the civil courts in enhancing or reducing rents on account of the holdings of occupancy raiyats. Proposed sub-section 180A (*8*) (*g*) provides that any sum agreed to by the parties to be paid as money-rent should be taken into consideration.

Section 180A (9).—It is proposed, in order to simplify the procedure, that the premium should be a fixed multiple of the rent. For the present three times the rent has been inserted in the Bill. As, however, the compulsory payment of a premium might prevent raiyats applying for conversion, it is proposed, where it would be a hardship on the tenant to pay a premium, that he should in lieu thereof pay an additional sum of 20 per cent. to be added to the rent determined for the land in which he has not acquired occupancy rights.

Section 180A (11).—For similar reasons it is proposed that the premium should be made payable in instalments not exceeding three.

Section 180A (12).—This sub-section makes the premium payable and recoverable as rent.

Section 180A (13).—This sub-section provides for appeals.

Section 180A (14).—This prevents the proceedings under this section being upset in any way except as provided by the section.

Section 180B.—It is proposed that when an *utbandi* rent has been converted into a uniform annual rent for any lands, such lands should cease to be deemed to be held under the custom of *utbandi*, and the raiyat should hold them as an occupancy raiyat.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1363L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce and pass the Bill at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923 :—.

THE BENGAL SMOKE-NUISANCES (AMENDMENT) BILL, 1923.

A

BILL

further to amend the Bengal Smoke-Nuisances Act, 1905.

Preamble.

WHEREAS it is expedient further to amend the Bengal Smoke-Nuisances Act, 1905, in the manner hereinafter appearing; Ben. Act III of 1905.

And whereas the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 & 6, Geo V, c. 61; 6 & 7, Geo V, c. 37; 9 & 10, Geo. V, c 101.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bengal Smoke-Nuisances (Amendment) Act, 1923.

Amendment of sections 6 and 7 of Bengal Act III of 1905.

2. (*1*) To clause (*a*) of sub-section (*1*) of section 6 of the Bengal Smoke-Nuisances Act, 1905, as amended by subsequent legislation (hereinafter referred to as the said Act), the words "clamps for making bricks, or" shall be added.

(*2*) In sub-section (*2*) of section 6 and in three places in section 7 of the said Act after the word "kiln" the word "clamp" shall be inserted.

Amendment of section 10.

3. In sub-section (*2*) of section 10 of the said Act—

(*a*) the word "and" at the end of clause (*j*) shall be omitted; and

(*b*) after clause (*j*) the following shall be inserted, namely :—

"(*jj*) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and the grant of permission for the working of furnaces, flues and chimneys and generally for the services of Inspectors; and."

STATEMENT OF OBJECTS AND REASONS.

The Bill is introduced to carry into effect the second recommendation of paragraph 335 of the Report of the Bengal Retrenchment Committee with regard to the Smoke-Nuisances Commission, which is "We also think that fees should be charged for the passing of plans of installations, for testing these, and also for giving advice."

The existing Act does not permit the levying of such fees, and by the present amendment it is proposed to enable Government to prescribe a scale of fees for the purposes enumerated in the section.

Advantage has also been taken of this occasion to introduce another small amendment in section 6 *(1)* *(a)* of the Act. Under a recent ruling of the High Court a "kiln" does not include a "clamp." It is therefore proposed to make the Act complete by introducing the words "clamps for making bricks" after the word "lime-kilns" in section 6 *(1)* *(a)* with consequential amendments in 6 *(2)* and section 7.

J. DONALD,

Member-in-charge.

DARJEELING;

The 30th May, 1923.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1364L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce the Bill and to refer it to Select Committee at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923 :—

THE ST. THOMAS' SCHOOL BILL, 1923.

A

BILL

to provide for the management and future location of the St. Thomas' School in Calcutta and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities.

Preamble.

WHEREAS it is expedient, in order to place the affairs of the St. Thomas' School in Calcutta (hitherto known as the Calcutta Free School) on a legal and stable basis, to provide for the management and future location of the said school and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the St. Thomas' School Act, 1923.

(*2*) This section and section 2 shall come into force at once, and the remainder of the provisions of this Act shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

CONSTITUTION.

Constitution of the Governors.

2. (*1*) The Governors of the St. Thomas' School (hereinafter referred to as the Governors) shall be—

(*a*) the Lord Bishop of Calcutta and Metropolitan of India;

(*b*) the Archdeacon of Calcutta;

(*c*) the Master of the Calcutta Trades Association for the time being, if willing to act;

(*d*) the following persons, of either sex, being members of the Church of England, namely:—

(*i*) one person to be nominated by the Governor General of India;

(*Clauses 3—5.*)

(*ii*) two persons to be nominated by the Governor of Fort William in Bengal ;

(*iii*) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta ;

(*iv*) two persons to be nominated by the vestry of St. John's Church, Calcutta ;

(*v*) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore ;

(*vi*) one person to be nominated by the Bengal Chamber of Commerce ; and

(*vii*) one person to be nominated by the Anglo-Indian and Domiciled European Association of Bengal.

(*2*) The Governors may at a meeting co-opt with themselves such persons, of either sex, being members of the Church of England, not exceeding three in number, as they may consider necessary. Such persons shall be deemed to be Governors for the purposes of this Act.

(*3*) If any of the authorities referred to in sub-clauses (*iii*) to (*vii*) of clause (*d*) of sub-section (*1*) does not by such date as may be prescribed by the Local Government nominate the Governors mentioned therein, the Local Government shall nominate suitable persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

(*4*) The names of the nominated and co-opted Governors shall be published in the *Calcutta Gazette*.

Incorporation of the Governors.

3. The Governors shall be a body corporate by the name of the "Governors of the St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Period of office of Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the *Calcutta Gazette*:

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the *Calcutta Gazette*:

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

Quorum.

5. (*1*) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

(*2*) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1363L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce and pass the Bill at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923 :—

THE BENGAL SMOKE-NUISANCES (AMENDMENT) BILL, 1923.

A

BILL

further to amend the Bengal Smoke-Nuisances Act, 1905.

Preamble.

WHEREAS it is expedient further to amend the Bengal Smoke-Nuisances Act, 1905, in the manner hereinafter appearing; Ben Act III of 1905.

And whereas the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 & 6, Geo V, c 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo V, c. 101

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Smoke-Nuisances (Amendment) Act, 1923.

Amendment of sections 6 and 7 of Bengal Act III of 1905.

2. (*1*) To clause (*a*) of sub-section (*1*) of section 6 of the Bengal Smoke-Nuisances Act, 1905, as amended by subsequent legislation (hereinafter referred to as the said Act), the words "clamps for making bricks, or" shall be added.

(*2*) In sub-section (*2*) of section 6 and in three places in section 7 of the said Act after the word "kiln" the word "clamp" shall be inserted.

Amendment of section 10.

3. In sub-section (*2*) of section 10 of the said Act—

(*a*) the word "and" at the end of clause (*j*) shall be omitted; and

(*b*) after clause (*j*) the following shall be inserted, namely:—

"(*jj*) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and the grant of permission for the working of furnaces, flues and chimneys and generally for the services of Inspectors; and."

STATEMENT OF OBJECTS AND REASONS.

The Bill is introduced to carry into effect the second recommendation of paragraph 335 of the Report of the Bengal Retrenchment Committee with regard to the Smoke-Nuisances Commission, which is "We also think that fees should be charged for the passing of plans of installations, for testing these, and also for giving advice."

The existing Act does not permit the levying of such fees, and by the present amendment it is proposed to enable Government to prescribe a scale of fees for the purposes enumerated in the section.

Advantage has also been taken of this occasion to introduce another small amendment in section 6 *(1)(a)* of the Act. Under a recent ruling of the High Court a "kiln" does not include a "clamp." It is therefore proposed to make the Act complete by introducing the words "clamps for making bricks" after the word "lime-kilns" in section 6 *(1)(a)* with consequential amendments in 6 *(2)* and section 7.

J. DONALD,

Member-in-charge.

DARJEELING;

The 30th May, 1923.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1364L., dated the 23rd June, 1923.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information. It is proposed to introduce the Bill and to refer it to Select Committee at the meeting of the Bengal Legislative Council commencing on the 2nd July, 1923 :—

THE ST. THOMAS' SCHOOL BILL, 1923.

A

BILL

to provide for the management and future location of the St. Thomas' School in Calcutta and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities.

Preamble.

WHEREAS it is expedient, in order to place the affairs of the St. Thomas' School in Calcutta (hitherto known as the Calcutta Free School) on a legal and stable basis, to provide for the management and future location of the said school and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the St. Thomas' School Act, 1923.

(*2*) This section and section 2 shall come into force at once, and the remainder of the provisions of this Act shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

CONSTITUTION.

Constitution of the Governors.

2. (*1*) The Governors of the St. Thomas' School (hereinafter referred to as the Governors) shall be—

(*a*) the Lord Bishop of Calcutta and Metropolitan of India;

(*b*) the Archdeacon of Calcutta;

(*c*) the Master of the Calcutta Trades Association for the time being, if willing to act;

(*d*) the following persons, of either sex, being members of the Church of England, namely:—

(*i*) one person to be nominated by the Governor General of India;

(*Clauses 3—5.*)

(*ii*) two persons to be nominated by the Governor of Fort William in Bengal ;

(*iii*) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta ;

(*iv*) two persons to be nominated by the vestry of St. John's Church, Calcutta ;

(*v*) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore ;

(*vi*) one person to be nominated by the Bengal Chamber of Commerce ; and

(*vii*) one person to be nominated by the Anglo-Indian and Domiciled European Association of Bengal.

(*2*) The Governors may at a meeting co-opt with themselves such persons, of either sex, being members of the Church of England, not exceeding three in number, as they may consider necessary. Such persons shall be deemed to be Governors for the purposes of this Act.

(*3*) If any of the authorities referred to in sub-clauses (*iii*) to (*vii*) of clause (*d*) of sub-section (*1*) does not by such date as may be prescribed by the Local Government nominate the Governors mentioned therein, the Local Government shall nominate suitable persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

(*4*) The names of the nominated and co-opted Governors shall be published in the *Calcutta Gazette.*

Incorporation of the Governors.

3. The Governors shall be a body corporate by the name of the "Governors of the St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Period of office of Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the *Calcutta Gazette*:

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the *Calcutta Gazette*:

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

Quorum.

5. (*1*) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

(*2*) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

(*Clauses 6—9.*)

Power to appoint new Governors.

6. If a nominated or co-opted Governor—

(*a*) dies, or

(*b*) is absent from the meetings of the Governors for more than six consecutive months, or

(*c*) desires to be discharged, or

(*d*) refuses to act or becomes incapable of acting, the authority which nominated or co-opted him may in cases (*b*) to (*d*) declare his post to be vacant and may in cases (*a*) to (*d*) nominate or co-opt, as the case may be, a new Governor to fill such vacancy for the unexpired remainder of the term for which such Governor would otherwise have continued in office.

MANAGEMENT AND PROPERTY OF ST. THOMAS' SCHOOL.

Change in the name of the school and vacation of office by existing Governors

7. From the date when this section comes into operation—

(*i*) the Calcutta Free School shall be known as the St. Thomas' School, and

(*ii*) the term of office of all persons then acting as Governors of the school shall cease and the St. Thomas' School Society shall cease to have any connection with the management of the school.

Property to vest in the Governors.

8. (*1*) All property, movable or immovable, which at the date when this section comes into operation appertains to the Calcutta Free School or is held by or on behalf of the persons then acting as Governors of the school or by the St. Thomas' School Society for the purposes of the school (including the premises specified in the First Schedule) shall, together with any property movable or immovable which may thereafter be given, bequeathed, transferred or acquired for the purposes mentioned in section 11, vest as and from such date in the Governors of the St. Thomas' School as constituted by section 3 for the purposes of the school:

Provided that the Governors shall apply any funds which up to that date have been held in trust for specific purposes in connection with the school including the funds set forth in the Second Schedule, and any funds which may thereafter be so held, to the purposes for which they are held in trust.

(*2*) All liabilities which at the said date have been incurred by the persons then or theretofore acting as Governors or by the St. Thomas' School Society for the purposes of the school shall be deemed to be, and are hereby declared thereafter to be, liabilities of the Governors of St. Thomas' School as constituted by section 3.

Powers to Governors to remove school from present site and dispose of that site.

9. The Governors are hereby authorised to carry out the removal of the school from the site in Free School Street where it is in part located, to such other site or sites as the Governors may, with the sanction of the Local Government, determine and the Governors are hereby empowered in that behalf to sell, lease, mortgage, or otherwise dispose of the present premises in Free School Street and the site thereof and to acquire by purchase or otherwise a suitable site or sites and to erect buildings for the purposes of the school as the Governors may, with the sanction of the Local Government determine.

(*Clauses 10—14.*)

Power to Governors to delegate their powers and to appoint teachers and officers.

10. The Governors shall have power from time to time—

(*a*) to delegate, subject to such conditions as they think fit, any of their powers to sub-committees consisting of such Governors as they shall think fit;

(*b*) to appoint a Secretary and to fix his remuneration, if any; and

(*c*) to appoint such persons as they shall think fit to employ for the purposes of the school (including school-teachers, boarding-masters, matrons, sergeants, clerks, officers and servants) and to fix their remuneration.

Purposes of the St. Thomas' School

11. The purposes of the St. Thomas' School are hereby declared to be as follows and, save as is otherwise herein provided, all property vested in the Governors by or under this Act shall be deemed to be held in trust for the said purposes and not otherwise:—

(*1*) the maintenance of an efficient school, and

(*2*) the provision of a sound education, with religious instruction in accordance with the principles of the Church of England, for the children of Europeans and Anglo-Indians:

Provided that in the interpretation of the terms 'European' and 'Anglo-Indian' the Governors shall have due regard to any definition of those terms which may be included in the Code of Regulations for European Schools.

This Act not to preclude Governors from conforming to the regulations of the Local Government.

12. The Governors shall not be precluded by any provision in this Act from conforming to any regulations which the Local Government may impose as the conditions of a grant of money to the school.

MAKING OVER OF ST. THOMAS' CHURCH.

Site of St. Thomas' Church

13. The Governors are further authorised in such manner as they deem fit to make over to, and to vest in, the Lord Bishop of Calcutta and Metropolitan of India and the Archdeacon of Calcutta conjointly St. Thomas' Church and the site thereof as specified in the Third Schedule, together with such adjacent land (the property of the Governors), not exceeding in all two bighas, as they may deem to be necessary for the convenient user thereof for the purposes of the Church of England.

PROVIDENT FUND.

Power to Governors to establish a Provident Fund.

14. The Governors may, with the approval of the Local Government, establish a provident fund for the benefit of their teachers and other officers and servants (appointed in accordance with the provisions of this Act) and compel all or any of such teachers, officers and servants to contribute to, and may make supplementary contributions to, such provident fund and make payments thereout in accordance with the rules of such fund.

(*Clause 15.*)

RULES.

Power to Governors to make rules.

15. The Governors may from time to time make rules for any of the following purposes, namely :—

(*a*) for their own guidance and for the conduct of their business;

(*b*) to determine the persons by whom orders for payment of money, contracts, transfers and other documents may be signed on behalf of the Governors;

(*c*) for the management and control of the school in all its departments, including any hostel that may be established in connection with the school;

(*d*) regulating the proceedings of sub-committees;

(*e*) prescribing the rates and the conditions under which contributions may be paid by the Governors and their officers, teachers and servants to the provident fund which may be established under section 14, and determining the conditions of payments from the fund.

THE FIRST SCHEDULE.

(*See* section 8.)

(1) With the exception of the site with buildings specified in the Third Schedule, the site with buildings thereon known as the Calcutta Free School, situated at 58, Free School Street, 28, Marquis Street and 6, Marquis Lane, Calcutta, measuring about twenty-nine bighas, and bounded as follows:—

"On the north by pucca houses, a small Church known as St. Joseph's (Madrasi) Chapel and Market Street; on the south by a house and Marquis Street; on the east by a house and Collin Street (formerly called Collinga Bazar Street); and on the west by Free School Street."

(2) The leasehold of the land and buildings, known as Kidderpore House, situated on 4, Diamond Harbour Road, in Kidderpore in the district of the 24-Parganas, containing an area of twenty-one decimal nought four acres or thereabouts, and bounded as follows:—

"On the north by St. Stephen's Church compound and Government land of the Cattle Market, on the north-east corner by the Orphangunge Road; on the east by the premises of the Zoological Gardens and the Meteorological Observatory compound; on the south by the land of the lines of the Governor's Body Guard; and on the west by the compound of St. Stephen's Parsonage and Diamond Harbour Road."

THE SECOND SCHEDULE.

(*See* section 8.)

LIST OF FUNDS.

1. Provident Fund.
2. Retiring Allowance Fund.
3. Apprentice Fund.
4. Thompson "Rex Ludorum" Fund.
5. Samuel Benjamin Taylor Fund.

THE THIRD SCHEDULE.

(*See* section 13 and the First Schedule.)

SITE OF ST. THOMAS' CHURCH.

The land on which the building of St. Thomas' Church stands, measuring two *bighas*, situated within the area described in clause (1) of the First Schedule, and bounded on the north, east and south by the compound of the Calcutta Free School and on the west by Free School Street.

STATEMENT OF OBJECTS AND REASONS.

It is desirable :—

(*1*) to place the affairs of the St. Thomas' School (hitherto known as the Calcutta Free School) on a legal and stable basis, and

(*2*) to authorise the Governors of the school to carry out the removal of the school from its present site to the Kidderpore House site or partly to that site and partly to other sites and to empower them in that behalf to sell, lease, mortgage or otherwise dispose of the present site of the school in Free School Street, and

(*3*) to vest the St. Thomas' Church in the Lord Bishop of Calcutta and Metropolitan of India conjointly with the Archdeacon of Calcutta for the purposes of the Church of England.

BEJOY CHAND MAHTAB,
Member in Charge.

DARJEELING ;
The 29th May, 1923.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, JULY 25, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1836L., dated the 21st July, 1923.—The following Report of the Select Committee on the Calcutta Suppression of Immoral Traffic Bill, 1923 (with the Bill, as amended by the Committee), is hereby published for general information.

REPORT OF THE SELECT COMMITTEE ON THE CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill for the suppression of Immoral Traffic in Calcutta and its suburbs was referred, have considered the Bill and the papers noted at the end of this paragraph, and have the honour to submit this, our report, with the Bill, as amended by us annexed hereto. In reprinting the Bill, all changes made by us have, so far as possible, been underlined.

Papers No. 1.

(1) Letter, dated the 10th May, 1923, from the Calcutta Missionary Conference.

(2) Letter, dated the 14th May, 1923, from the Honorary Secretary, Bengal Social Service League.

(3) Letter No. 139J.J., dated the 23rd/26th May, 1923, from the Commissioner, Presidency Division.

Papers No. 2.

(1) Letter No. 61J.D., dated the 23rd May, 1923, from Mr. H. P. Duval, I.C.S., Secretary to the Government of Bengal, Judicial Department.

(2) Letter, dated 21st May, 1923, from the Calcutta Vigilance Association.

Paper No. 3.

Letter No. 236, dated the 17th May, 1923, from the General Secretary, European Association, Calcutta.

Papers No. 4.

(1) Letter No. 287, dated the 8th June, 1923, from the Honorary Secretary, British Indian Association.

(2) Letter, dated the 8th June, 1923, from the Secretary, Indian Christian Association.

(3) Letter, dated the 8th June, 1923, from the Secretary, the Anglo-Indian and Domiciled European Association.

Paper No. 5.

Letter, dated the 11th June, 1923, from the Secretary, Indian Association.

Paper No. 6.

Letter No. 2783/D.D.124-23, dated the 14th June, 1923, from the Commissioner of Police, Calcutta.

Paper No. 7.

Letter, dated the 28th June, 1923, from the Honorary Secretary, Calcutta League of Women Workers.

Paper No. 8.

Letter No. S. 1830, dated the 5th July, 1923, from the Chairman of the Corporation of Calcutta.

We realise that the Bill in no way attempts to provide a comprehensive remedy for the evils of immoral traffic and we have confined ourselves to an endeavour to effect some control in three main directions : firstly to diminish the supply of prostitutes by striking at the procurers and the men who live on the earnings of prostitution ; secondly to provide for the removal from brothels of minor girls under 16 and the punishment for detention of any girl or woman in a brothel against her will ; and thirdly to protect as far as possible students and other youths from temptation by penalising solicitation. We are fully conscious that the Bill in itself will go a very short way if it is not supplemented by a persistent vigorous organisation for rescue work and the proper aftercare of girls and women removed from brothels, and we feel that though Government may give valuable assistance, this is work that must in the main depend upon private effort. Some of us have great doubt

from solicitation do not outweigh the benefits of such a course but the majority are of opinion that the existing evil is sufficiently grave to warrant an attempt being made to suppress it and feel that it is our duty to place before the Council provisions to this end.

2. The more important changes we have made in the Bill are as follows :—

Long title, preamble and clause 1.—We consider that the extent of the Bill should be the same as the extent of the Bengal Children Act except that the operation of the present Act should not extend to the Municipality of Howrah as such extension would involve the setting up of a separate machinery to work it. We have made a drafting amendment accordingly in the long title, extent clause and the definitions.

Clause 2, sub-clause (1).—The words "or disorderly house" have been omitted from the definition as unnecessary and misleading.

Clause 2, new sub-clause (3).—It is necessary that a definition of the words "public place" and "street" should be inserted so as to bring the wording of this Act into line with the Calcutta Police Act. A sub-clause has been inserted to this effect.

Clauses 3 and 4.—We have transferred clause 3 to the end of the Bill so as to make the decision on this clause subsequent to that on clause 4.

Clause 4.—As already stated the majority of us consider that it is our duty to propose for the acceptance of the Council provisions for dealing with the evils of solicitation. We are all agreed that clause 4 as originally drawn was too wide and involved considerable dangers; we have defined more exactly the offence to be penalised but we have left the clause so as to include solicitation from balconies and verandahs. We have provided that the powers of arrest shall be exercised only by selected officers nominated by the Commissioner of Police and have specifically included sergeants among the officers who may be so nominated as there appears to be some doubt whether they are above or below the rank of Sub-Inspector. The majority of us feel strongly that if an attempt is to be made to cope with the evil no further weakening of the section is possible ; if the powers of arrest without complaint are not to be entrusted to police officers the only possible alternative is to retain the present law and abandon the attempt to bring solicitation under further control. The minority are prepared to accept this alternative rather than run the risks they consider are involved in the grant of these powers of arrest.

Clause 5.—Agreeing with the Commissioner of Police we consider that the powers conferred by this clause should not be exercised by a Deputy Commissioner of Police, but that the Commissioner of Police should be empowered to refer any case to a Deputy Commissioner of Police for inquiry. We also consider that the order for the discontinuance of a brothel should be made not merely as a personal order against the owner, lessor, manager or occupier but as a general order against the public, the notice served on the owner, occupier or lessor being to the effect that the house, room or place which has been used as a brothel or disorderly house or for the purpose of a business of common prostitute shall not again be so used. We are impressed by the fact that otherwise the owners and occupiers may with the greatest ease evade the provisions of this Act. We have safeguarded an incoming proprietor or tenant by inserting a provision to the effect that the Commissioner of Police shall keep a list of all houses, rooms or places in respect of which an order has been made under this clause for the discontinuance of the use of such houses, rooms or places as brothels or for any of the other purposes specified in the clause. We have therefore deleted the original sub-clause (*7*) and amalgamated it with sub-clause (*6*). At the same time we have increased the time allowed under sub-clause (*2*) to enable the owner or lessor, or manager or occupier, on whom the order is served, to comply with the order.

The original *clauses 6, 7 and 8* deal with the rescue of girls from brothels and disorderly houses. We are unanimously in favour of making provision for such rescue by giving adequate powers of entry to the police in order that they may be able to search for girls who are placed in this position, but the proposal that the girl after her rescue may only be looked after until she attains the age of sixteen years does not commend itself to us. We consider

that if the rescue is to be effective and the girl trained to earn a respectable livelihood she must not be cast adrift so quickly and power must be taken to continue her training, if necessary, to the age of eighteen. We have, therefore, provided that while the procedure of the Bengal Children Act shall apply, the court shall have power to direct detention until the age of eighteen years and in clause 15 we have taken power to modify the provisions of the Bengal Children Act.

Clause 7.—We consider that a girl who has been removed from a brothel or disorderly house should be kept in a suitable place other than a police-station or jail not only until she is brought before a court but until the court decides to place her in proper custody or decides to dismiss the case. We have amended the clause accordingly.

The original *clause 8* is now contained in part in the revised *clause 15* which deals with the subsequent treatment of girls on the lines already indicated.

We have considered carefully the many suggestions that have been made for checking the evil of prostitution by taking steps against procurers. All of us consider that this is an essential part of the scheme of the Bill and are strongly in favour of making the provisions against procurers and those who live on the earnings of prostitution as severe as is possible. Judicial corporal punishment has in other countries been found the most effective deterrent in the case of these degraded dregs of humanity and in the interests of their unfortunate victims we recommend that this punishment shall be authorised by law. While it is right to deprive the offender of his profits by the infliction of fines we consider that in no case should fine be the only penalty; the profits of the trade would prevent a fine by itself being deterrent.

Clauses 9, 10, 11 and 12—which we have inserted in the Bill are based on the Burma Act, but we have tried to make these clauses conform to the above principle and to stop possible loopholes which might be found to exist in the wording of the Burma Act.

Clause 13.—We consider that offences under clauses 9, 10, 11 and 12 should be triable only by a Presidency Magistrate or a Magistrate of the first class.

3. The Bill was published in English in the *Calcutta Gazette* of the 14th February, 1923.

4. We do not consider that the Bill has been so altered as to require republication.

5. We recommend that the Bill, as amended by us, be passed.

H. L. STEPHENSON,
Member in charge.

L. BIRLEY.
S. N. MULLIK.
JATINDRA NATH MOITRA.
JATINDRA NATH BASU.
H. P. DUVAL.
S. C. MUKHARJI.
*K. C. ROY CHAUDHURI.
A. RAHEEM.
*F. E. E. VILLIERS.

C. TINDALL,
Secretary to the Govt. of Bengal and
Secretary to the Bengal Legislative Council.

CALCUTTA;
The 16th July, 1923.

* Signed subject to a minute of dissent which will be sent in and published later.

NOTE.—Dr. Hassan Suhrawardy was prevented by illness from attending the meetings of the Select

THE CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC BILL, 1923;

(as amended by the Select Committee.)

[NOTE.—*All changes made by the Select Committee have, so far as possible, been underlined.*]

A

BILL

for the suppression of Immoral Traffic in the town and suburbs of Calcutta and in the Port of Calcutta.

WHEREAS it is expedient to make better provision for the suppression of brothels, of the traffic in women and girls and of the practice of solicitation and for other purposes of a like nature in the town and suburbs of Calcutta and in the Port of Calcutta;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act; [5 & 6 Geo. 5, C. 61; 6 & 7 Geo. 5, C. 37; 9 & 10 Geo. 5, C. 101.]

It is hereby enacted as follows:—

Short title, commencement and extent.

1. *(1)* This Act may be called the Calcutta Suppression of Immoral Traffic Act, 1923.

(2) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

(3) It extends to Calcutta as defined in section 2.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "brothel" means any house, room or place which the occupier or person in charge thereof habitually allows to be used by any other person for the purposes of prostitution; [Cf. Bur. Act II of 1921, s. 2.]

(1a) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908; [Ben. Act IV of 1866.] [Ben. Act II of 1866.] [XV of 1908.]

(2) "Commissioner of Police" means the Commissioner of Police for the town and suburbs of Calcutta;

(3) the words "public place" and "street" have the meanings assigned to them by section 3 of the Calcutta Police Act, 1866;

(4) "prescribed" means prescribed by rules made under section 16. [Ben. Act IV of 1866.]

3. *(Reproduced as clause 14.)*

(*Clauses 4, 5.*)

Penalty for solicitation.

4. (*1*) Whoever, in any street or public place or within sight of, and in such manner as to be seen from any street or public place, endeavours to attract attention for the purpose of prostitution, or for such purpose solicits or abets the solicitation of any person, shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to one month, or with both, and if such person is again convicted after three previous convictions for the same offence, he shall be punished with imprisonment for a term which may extend to six months. [*Cf.* Bur Act II of 1921, s. 4.]

(*2*) Any police officer not below the rank of Sub-Inspector of Police or Sergeant, specially empowered by name in this behalf by the Commissioner of Police, may arrest without a warrant for any offence specified in sub-section (*1*). [*Cf.* Ben. Act IV of 1866, s. 72A.]

Power to order discontinuance of house, etc., as brothel, etc.

5. (*1*) When the Commissioner of Police receives information that any house, room or place— [*Cf.* Ben. Act IV of 1866, s. 43.]

(*a*) is being used as a brothel or disorderly house, or for the purpose of carrying on the business of a common prostitute, in the vicinity of any educational institution or of any boarding house, hostel or mess used or occupied by students, or of any place of public worship or recreation, or

(*b*) is used as, or for the purpose, aforesaid to the annoyance of respectable inhabitants of the vicinity, or

(*c*) is used as, or for the purpose, aforesaid on any main thoroughfare which has been notified in this behalf by the Local Government on the recommendation of the Corporation of Calcutta, or

(*d*) is used as a common place of assignation,

he may cause a notice to be served on the owner, lessor, manager or occupier of the house, room or place to appear before him, either in person or by agent, on a date to be fixed in such notice, and to show cause why, on the grounds to be stated in the notice, an order should not be made for the discontinuance of such use of such house, room or place.

(*2*) If, on the date fixed, or on any subsequent date to which the hearing may be adjourned, the Commissioner of Police is satisfied, after making such inquiry as he deems fit, that the house, room or place is used as described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*), as the case may be, he may direct, by order in writing on such owner, lessor, manager or occupier, that the use as so described of the house, room or place be discontinued from a date not less than fifteen days from the date of the said order and be not thereafter resumed.

(*3*) (*Omitted.*)

(*4*) No house, room or place, concerning which an order has been made under sub-section (*2*), shall

(*Clause 6.*)

again be used, or be allowed to be used, in any manner described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*), as the case may be, and the Commissioner of Police, if he is satisfied, with or without further inquiry, that such house, room or place is again used in such manner, may, by order in writing on the owner, lessor, manager or occupier of such house, room or place, direct that the use as so described of such house, room or place be discontinued within a period of seven days and be not thereafter resumed.

(*5*) For the purposes of this Act the decision of the Commissioner of Police that a house, room or place is used in any manner, or for any purpose, described in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*) shall be final, and the legality or propriety thereof shall not be questioned in any trial or judicial proceeding in any Court.

(*6*) Whoever, after an order has been made by the Commissioner of Police under sub-section (*2*) or sub-section (*4*) in respect of any house, room or place, uses, or allows to be used, such house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to fifty rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to six months in addition to, or in lieu of, any fine imposed. [*Cf.* Ben. Act IV of 1866, s. 43A.]

(*7*) (*Omitted.*)

(*7a*) For the purpose of an inquiry under this section the Commissioner of Police may depute a Deputy Commissioner of Police to make a local investigation, and may take into consideration his report thereon.

(*7b*) The Commissioner of Police shall maintain a register in which shall be entered a description of all houses, rooms and places in respect of which an order has been made under this section. Such register shall be open to inspection by the public on payment of the prescribed fee.

(*8*) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, in respect of which an order has been made on the lessee, tenant or occupier thereof directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on the business of a common prostitute, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

Removal and disposal of minor girls found in brothels, etc.

6. (*1*) The Commissioner of Police, or a Deputy Commissioner of Police, or a police-officer not below the rank of Inspector, specially authorised in writing in this behalf by the Commissioner or a Deputy Commissioner of Police, shall be empowered to enter

(Clauses 7-9.)

into any brothel or disorderly house or house of assignation, in which he has knowledge or suspicion, or it is reported to him that a girl, apparently under the age of sixteen years, is living or is carrying on, or is being made to carry on, the business of a prostitute, and shall be entitled to remove such girl forthwith from such brothel, disorderly house or house of assignation.

(*2*) (*Omitted.*)

(*3*) (*Omitted.*)

(*4*) (*Omitted.*)

(*2a*) A girl who has been so removed shall be brought before a Juvenile Court constituted under section 37 of the Bengal Children Act, 1922, and the Court shall cause an inquiry to be made in the manner provided in sub-section (*3*) of section 27 of that Act and, if satisfied that the girl is under sixteen years of age and that she should be dealt with as hereinafter provided, may make an order that such girl be placed in suitable custody in the prescribed manner until she attains the age of eighteen years or for any shorter period. Ben. Act II of 1922

(*5*) For the determination whether a girl produced before a Court under the provisions of this section is under sixteen years of age, the provisions of section 38 of the Bengal Children Act, 1922, shall apply.

Intermediate custody of girl removed from brothels, etc.

7. When a girl has been removed from a brothel or disorderly house or house of assignation under the provisions of sub-section (*1*) of section 6, the Commissioner or Deputy Commissioner of Police or other police officer carrying out the removal shall, until such girl can be brought before the Court, and until the Court makes an order under sub-section (*2a*) of section 6 or otherwise disposes of the case, cause her to be detained in such place (other than a police-station or jail) as may be prescribed in this behalf by the Local Government.

8. (*Omitted.*)

Punishment for living on the earnings of prostitution.

9. (*1*) Any male person who knowingly lives, wholly or in part, on the earnings of prostitution shall be punished with imprisonment which may extend to three years, or with whipping, or with both of these punishments and shall also be liable to a fine which may extend to one thousand rupees. [Cf. Bur Act II of 1921, s. 7.]

(*2*) Where a male person is proved to be living with, or to be habitually in the company of, a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person

(*Clauses 10-15.*)

or generally, it shall be presumed, until the contrary is proved, that he is knowingly living on the earnings of prostitution.

Procuration.

10. Any person who induces a woman or girl to go from any place with intent that she may, for the purposes of prostitution, become the inmate of, or frequent, a brothel, shall be punished with imprisonment which may extend to three years, or (if a male) with whipping or (if a male) with both of these punishments, and shall also be liable to fine which may extend to one thousand rupees. [Cf. Bur. Act II of 1921, s. 8.]

Punishment for importing woman or girl for prostitution.

11. Any person who brings or attempts to bring, or causes to be brought, into Calcutta any woman or girl with a view to her carrying on, or being brought up to carry on, the business of a prostitute, shall be punished with imprisonment which may extend to three years, or (if a male) with whipping, or (if a male) with both of these punishments and shall also be liable to fine which may extend to one thousand rupees. [Cf. Bur. Act II of 1921 s. 9.]

Detention as prostitute or in brothels, etc.

12. Any person who detains any woman or girl against her will— [Cf. Bur. Act II of 1921, s. 10.]

(*a*) in any house, room or place in which the business of a prostitute is carried on, or

(*b*) in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband,

shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees or with both.

Offences triable by Presidency Magistrates or First Class Magistrates.

13. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try offences punishable under sections 9, 10, 11 and 12. [Cf. Bur. Act II of 1921 s. 18.]

Repeals

14. Sections 43, 43A, 43B, 68B and 72A of the Calcutta Police Act, 1866, and sections 17, 17A, 17B, 41A and 43A of the Calcutta Suburban Police Act, 1866, are hereby repealed. [Bill, clause 3.] Ben. Act IV of 1866. Ben. Act II of 1866.

Subsequent treatment of girl committed to suitable custody under sub-section (2a) of section 6.

15. When an order that a girl be placed in suitable custody has been passed under sub-section (*2a*) of section 6, the provisions of the Bengal Children Act, 1922, shall, subject to such modifications as the Local Government may prescribe by rules made under section 16 and notwithstanding her age, thereafter apply to the case of such girl during the period of the said order, as if she had been a child or young person dealt with under section 28 of that Act. Ben. Act II of 1922.

(*Clause 16.*)

Rules. **16.** The Local Government may make rules—

(*a*) prescribing the fee to be paid for inspection of the register maintained under sub-section (*7b*) of section 5;

(*b*) for the care, treatment, instruction and maintenance of girls placed in suitable custody under sub-section (*2a*) of section 6; and

(*c*) prescribing the places in which girls may be detained under the provisions of section 7.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1845L., dated Calcutta, the 23rd July, 1923.—The following Report of the Select Committee on the Bengal Tenancy (Utbandi Amendment) Bill, 1923 (with the Bill, as amended by the Committee), is hereby published for general information :—

REPORT OF THE SELECT COMMITTEE ON THE BENGAL TENANCY (UTBANDI AMENDMENT) BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be fixed for lands held under the custom of *utbandi* and to make further provision in respect of such lands was referred, have considered the Bill, and the papers noted at the end of this paragraph and have the honour to submit this, our report, with the Bill, as amended by us annexed hereto. In reprinting the Bill, all changes made by us have, so far as possible, been underlined.

Paper No. 1.

1. Translation of petitions from the inhabitants of various villages in the district of Nadia.

2 Petition from Babu Nityahari Bhattacharji and other members of the Raiyat Association of Belpukur and 15 other villages.

3. Letter No. 1486, dated the 28th March, 1923, from the District Judge of Murshidabad.

4. Letter, dated the 28th March, 1923, from Mr. M. M. Crawford.

5. Letter No. 225 G-XVII—1, dated the 28th March, 1923, from the District Judge of Pabna and Bogra.

6. Letter No. 646 G., dated the 28th March, 1923, from the District and Sessions Judge, Rajshahi.

7. Resolutions, dated the 28th March, 1923, by the Bekoaile Raiyat Samity.

8. Letter, dated the 29th March, 1923, from Babu Jatindra Nath Ghose, M.A., B.L.

9. Memorandum No. 7, dated the 30th March, 1923, by the Nadia Landholders Association.

10. Letter No. 70, dated the 30th March, 1923, from the Murshidabad Association.

11. Letter, dated the 30th March, 1923, from Maulvi M. Azizul Haque, B.L.

12. Letter No. E-O-17-21623, dated the 30th March, 1923, from Raja Bhupendra Narayan Sinha Bahadur of Nashipur.

13. Letter, dated the 31st March, 1923, from Maulvi Ekramul Haq, M.L.C.

14. Letter No. 1076 R., dated the 1st April, 1923, from the Commissioner of Rajshahi Division.

15. Letter No. 2068, dated the 2nd April, 1923, from Raja Ban Behari Kapur Bahadur, C.S.I.

16. Letter No. S.—963, dated the 3rd April, 1923, from the District Judge of Jessore.

17. Letter No. 1047, dated the 3rd April, 1923, from the District Judge of Nadia.

18. Letter No. K. H. 57, dated the 5th April 1923, from Raja Pramatha Bhusan Deva Ray Bahadur of Naldanga.

19. Letter No. XLIV-14-2864, dated the 6th April, 1923, from the Director of Land Records, Bengal.

20. Letter, dated the 9th April, 1923, from the Hon'ble Sir Manindra Chandra Nandy, K.C.I.E.

21. Letter No. 4 R.L., dated the 16th April, 1923, from the Commissioner of the Presidency Division.

22. Letter No. 275, dated the 27th April, 1923, from the British Indian Association.

2. The more important changes are as follows :—

1. *Long title and Preamble.*—We have taken into consideration the fact that difficulties have arisen in the interpretation of the words '*held under the custom of utbandi*' and we consider that the wording should be made explicit so as to cover all *utbandi* lands without question. We have made an amendment to give effect to this recommendation.

Clause 2. (i) Proposed section 180A, sub-section (1).—We have considered very carefully the opinions on the draft Bill as circulated by the Government and we think that the objections to the new section 180 B and to 180A (2)(b) will best be met by restricting the power of making applications for fixing a uniform annual money rent to persons who are, or who but for the operation of section 180 in respect of lands held under the custom of *utbandi* would have been, settled raiyats of the village. This restriction will ensure that casual tenants will not be able to avail themselves of the provisions of the Bill. We have accordingly suggested an amendment to this sub-section. An amendment consequential on the recommendation recorded in paragraph 1 has also been made in this sub-section and throughout the remaining portions of the Bill.

(ii) Proposed section 180A, sub-section (2).—The words "in the same village" have been inserted in clauses (a) and (b) so as to make the intention clear, and a provision has been made that in the case of lands in which the raiyat has not acquired a right of occupancy the application shall include not only the lands which he himself has held during the past six years but also those lands which have been cultivated during that period by persons whose heir he is and who have died.

(iii) Proposed section 180A, new sub-section (2a).—We consider that, with a view to simplify the procedure and to diminish the cost of proceedings, the landlord should be able to put in a single application for conversion in respect of all the lands held in *utbandi* by tenants under him in the same village, while one or more tenants should be able to put in a single application for conversion in respect of the lands held in *utbandi* by them under the same landlord and in the same village.

(iv) Proposed section 180A, sub-section (5).—We consider that steps should be taken to protect permanent superior landlords under whom there are temporary tenure-holders or *ijaradars*, who might make use of the provisions of the Act to the prejudice of the permanent superior landlords by the taking of premium on conversion. We consider that the best way of protecting permanent superior landlords in this matter is to make it obligatory on the officer who receives the application to send notice in cases where the immediate landlord of the raiyat has a mere temporary interest to the superior landlord in order that the latter may contest the application before the determining officer or come to an amicable private arrangement with the immediate landlord of the raiyat in regard to the apportionment of the premium.

(v) Proposed section 180A, sub-sections (6) and (7).—Consequential and drafting alterations have been made in these sub-sections. While considering proposed sub-section (7) we discussed the question as to whether a premium should be taken in every case of conversion of *utbandi* lands in which the raiyat has not acquired an occupancy right. We consider that the taking of a premium in all such cases is justified. It represents a payment for new rights conferred.

(*vi*) *Proposed section 180A, sub-section* (*8*).—We consider that the basis of the calculation of the sum to be determined as uniform annual money rent should be the average of the amount that was actually paid or payable as rent for the land during the previous six years and that this average rent should not be made merely a factor of equal weight with others for the guidance of the determining officer. We have, therefore, agreed to delete clause (*b*) of this proposed sub-section and have amended the main sub-section to the above effect. As to the subsidiary points which the determining officer should take into consideration in dealing with special cases, objections were put forward by various sides in regard to clause (*a*) and clause (*c*) of this sub-section, but these were withdrawn on compromise, as the various clauses go to balance one another. Drafting amendments have also been made in clause (*d*).

In our opinion the charges incurred by the landlord on account of drainage should also be considered and we have amended clause (*e*) accordingly and have also simplified the drafting of this clause.

(*vii*) *Proposed section 180A, sub-section* (*9*).—In connection with this proposed sub-section the question as to whether there should be a fixed rate of premium or a varying rate of premium was discussed. A varying rate might meet local conditions and cases where rents are unduly high or unduly low. We, however, on consideration of all the factors in the case have recommended the retention of the proposal in the Bill that there should be a fixed rate of premium in all cases. It is of special importance that the landlord or the tenant, as the case may be, should have a fairly clear idea of what he is asking for or what he is faced with at the time when he makes the application for conversion or receives notice of such application. Where both parties know mathematically what their rights are in the absence of special circumstances, an amicable settlement is far more likely than where there is inevitably a point to be decided by a third party. We have retained the proposal in the Bill that the amount of the premium should be three years' rent.

We consider that the proviso to this sub-section should be deleted. It is better for both the landlord and the tenant that a premium should be paid in regard to the lands in which the tenant has not acquired occupancy rights than that the tenant and his successors should be saddled with an increase of rent in lieu of payment of premium.

(*viii*) *Proposed section 180A, sub-section* (*10*).—The question of costs was considered in connection with this sub-section, but we consider that it is desirable that the parties should bear their own costs. This will be the case in the absence of a definite provision in the Bill to the contrary. This sub-section has, therefore, been left unaltered.

(*ix*) *Proposed section 180A, sub-section* (*11*).—We agree to the system of payment of the premium by instalments and consider that the principle of payment by not more than three instalments, as suggested in the Bill, is suitable.

(*x*) We have adopted the remaining sub-sections of the proposed section 180A, and also the proposed section 180B with minor drafting modifications. We consider that the objections in the opinions received to this proposed section are met satisfactorily by the restriction of the operation of the Bill to lands held by settled raiyats or by persons who would have been settled raiyats but for the operation of the *utbandi* provisions of the Tenancy Act.

3. In our deliberations we have throughout kept in view the need for maintaining the general working scheme of the Bill as a basis of compromise and this has necessarily involved give and take on either side in regard to matters of detail in the interest of the success of the measure as a whole.

4. The Bill was published in English in the *Calcutta Gazette* of the 27th June, 1923.

5. We do not consider that the Bill has been so altered as to require republication.

6. We recommend that the Bill, as amended by us, be passed.

BIJAY CHAND MAHTAB
(MAHARAJADHIRAJA BAHADUR OF BURDWAN),
Member in charge
P. C. MITTER.*
H. P. DUVAL.
M. C. McALPIN.
MAHENDRA NATH GUPTA.
KSHAUNISH CHANDRA ROY.†
SYED ERFAN ALI.†
EKRAMUL HUQ.*
RESHEE CASE LAW.*
BHISHMADEV DAS.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

CALCUTTA;
The 14th July, 1923.

NOTE—* Signed subject to the note of dissent annexed.
† Signed subject to note of dissent, if any.

Note of Dissent by the Hon'ble Mr. P. C. Mitter.

I sign this report subject to one suggestion. In my opinion multiplicity of legal proceedings should be avoided. I say this as much in the interest of the landlord as of the tenant and if I may say so, more in the interest of the tenant than of the landlord because the tenant has usually a smaller purse. The proposal in the Bill will mean a fresh suit on payment of court fees.

The proposal in sub-section (*12*) of the proposed new section 180A involves a fresh suit for the recovery of the *salami*. This means that the plaintiff will have to pay court fees which will be ultimately recoverable from the tenant. This will also mean that both parties will have to incur costs of litigation. Litigation necessarily results in harassment to both the parties. I would therefore suggest that the premium or the instalment may be recovered by the landlord making a requisition to the Collector for the recovery of the arrear of the same in the manner set forth in sub-sections (*3*) and (*4*) of section 158A, and the provisions of sub-sections (*5*) to (*9*) of that section shall apply to the recovery of the said arrear by the Collector as if it were an arrear of rent recoverable by him under the provisions of that section. In my view, if my suggestion be accepted both the landlord and the tenant will be benefited.

Note of Dissent by Maulvi Ekramul Huq, B.L., M.L.C.

I do not agree to the payment of any premium by the *utbandi* tenant for which provision is made in section 180A, sub-sections (7) and (9). But for section 180 of the Bengal Tenancy Act such tenants would have got the right of occupancy long ago and the amended Act does not confer any new right whatsoever but simply tries in a feeble manner to undo a wrong done so long.

Note of Dissent by Raja Reshee Case Law, C.I.E., M.L.C.

I sign subject to the reservation that the premium should be paid in one instalment and not three, as otherwise it will involve the landlord to unnecessary litigation for its recovery.

THE BENGAL TENANCY (UTBANDI AMENDMENT) BILL, 1923;

(as amended by the Select Committee.)

A

BILL

to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money rent may be determined for utbandi lands and to make further provision in respect of such lands.

Preamble.

WHEREAS it is expedient to supplement and amend the Bengal Tenancy Act, 1885, in order to provide means whereby a uniform annual money-rent may be determined for land held under the custom of *utbandi* or under any form of tenancy locally known as *utbandi*, and to make such other provisions as hereinafter appear in respect of lands for which a uniform annual money rent has been so determined; VIII of 1885.

And whereas the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 & 6 Geo. V., c. 61; 6 & 7 Geo. V., c. 37; 9 & 10 Geo. V., c. 101.

It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Bengal Tenancy (Utbandi Amendment) Act, 1923.

(*2*) It extends to the whole of Bengal.

Insertion of new sections 180A and 180B in Act VIII of 1885.

2. After section 180 of the Bengal Tenancy Act, 1885, the following sections shall be inserted, namely:—

Fixing of uniform annual money rent in respect of *utbandi* lands.

"180A. (*1*) Notwithstanding anything contained in section 180, when a raiyat who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi* would have been, a settled raiyat of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land, (hereinafter referred to as *utbandi* land), either the landlord or the raiyat may apply to have a uniform annual money rent determined for the land.

(*2*) The application shall include at the discretion of the applicant either—

(*a*) all utbandi lands held in the same village by the same raiyat under the same landlord in which the raiyat has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(*Clause 2.*)

(*b*) all the lands held in the same village under the same landlord by the raiyat which the raiyat, or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has or had not acquired occupancy rights therein, or

(*c*) both.

(*2a*) Subject to the provisions of sub-section (*2*), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more raiyats under him and a joint application may be made by two or more raiyats in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(*3*) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorised by the Local Government.

(*4*) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (*3*) to receive applications.

(*5*) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord of the raiyat is a temporary tenure-holder or *ijaradar* the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(*6*) If the application is made in respect of lands in which the raiyat has not acquired occupancy rights, the officer may reject it in whole or in part in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then received the application the circumstances have in the meantime changed.

(*Clause 2.*)

(7) If the application is not wholly rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the raiyat has not acquired occupancy rights, a premium to be paid to the landlord, and he shall order that the raiyat shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any.

(8) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land during the previous six years and shall ordinarily declare the same as the sum to be paid as rent:

Provided that the officer may also take into conderation—

(*a*) the average money rent payable by occupancy raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) [*Omitted.*]

(*c*) the average rates for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands;

(*d*) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by raiyats who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise;

(*e*) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the utbandi lands and the arrangements made for continuing those charges;

(*f*) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy raiyats;

(*g*) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(Clause 2.)

(*9*) The premium to be paid to the landlord in the case of lands in which the raiyat has not acquired occupancy rights shall be three times the rent, or, if the application is made under clause (*c*) of sub-section (*2*), three times the portion of the rent determined under sub-section (*7*) on account of such lands.

(*Proviso omitted.*)

(*10*) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(*11*) The officer may, on the application of the raiyat, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (*7*) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(*12*) The premium or the instalments thereof shall be payable and recoverable as rent, but interest shall only be awarded in respect of such instalments as are not paid by the date fixed under sub-section (*11*).

(*13*) The order shall be subject to appeal in the manner provided in section 109A, unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(*14*) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy raiyat from the date of the order."

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1846L., dated Calcutta, the 23rd July, 1923.—The following Report of the Select Committee on the St. Thomas' School Bill, 1923, (with the Bill, as amended by the Committee), is hereby published for general information.

REPORT OF THE SELECT COMMITTEE ON THE ST. THOMAS SCHOOL BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill to provide for the management and future location of St. Thomas' School in Calcutta and for the making over of St. Thomas' Church in Calcutta to certain ecclesiastical authorities was referred, have considered the Bill and have the honour to submit this our Report with the Bill, as amended by us, annexed hereto. In reprinting the Bill all changes made by us have, so far as possible, been underlined.

2. We have made some changes in the Title and Preamble to bring the wording into line with the actual facts.

We consider that membership of the Governing Body of St. Thomas' School should be widened and have amended clause 2 accordingly.

In so doing we have transferred from original sub-clause *(d)* to separate sub-clauses, the references to the representative of the Bengal Chamber of Commerce and the representative of the Anglo-Indian and Domiciled European Association of Bengal, so as to make it possible for those bodies to nominate either a member of the Church of England or a member of some other denomination.

We have also added to the body of Governors a European or Anglo-Indian Commissioner of the Corporation. We have also given the Governors a free choice in regard to the persons who shall be co-opted under sub-clause *(2)*.

Clauses 11 and 12.—We have considered these clauses in conjunction with clause 2 and consider that they should stand as drafted. In Bengal, whatever the denomination of a school may be, there is under the rules for grants-in-aid to European schools no restriction on religious teaching in that school being imparted to all boarders according to the principles of a particular denomination, while in the case of day-boys a conscience clause is an obligatory condition of a grant-in-aid from the Government. The application of those rules is specially safeguarded by clause 12, and this will ensure that the St. Thomas' School is conducted in this matter on the same general principle as governs the conduct of other European schools in Bengal.

Clause 13.—We have considered very carefully the question of the amount of land that should be made over by the Governors to St. Thomas' Church, and we are of opinion that the area which it is proposed to make over is suitable. A new proposal has been made to increase that area by nine cottahs, but in our opinion this is not justified in view of the financial difficulties of the school.

We consider that the total area of two bighas, as set out in this clause will be sufficient to provide a suitable compound for the Church and, as the Free School site may be disposed of in one or more lots, and as the general lay-out may differ according to the manner of disposal, it is difficult at the present moment to fix the exact boundaries of the land that will be given to the Church. We have, therefore, confined our specification of that land to a

declaration as to the total area of the Church and its compound, and we have provided that the Local Government shall approve the actual delineation before the making over of the compound land to the ecclesiastical authorities takes place.

Clause 14 and sub-clause (e) of clause 15.—We have made a drafting amendment so as to make it clear that more than one provident fund can, if necessary, be established for the teachers, officers and servants of the school.

We have amended the First Schedule so as to exclude from it merely the land on which the actual building of St. Thomas' Church stands.

We have also omitted the Third Schedule. These changes are consequential on the amendments made in clause 13.

3. The Bill was published in English in the *Calcutta Gazette* of the 27th June, 1923.

4. We do not consider that the Bill has been so altered as to require re-publication.

5. We recommend that the Bill, as amended by us, be passed.

B. C. MAHTAB,
Member in charge.

H. P. DUVAL.
W. W. HORNELL.
S. R. DAS.
SURENDRA NATH MALLIK.
F. E. E. VILLIERS.
H. BARTON.
W. L. CAREY.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

CALCUTTA;
The 18th July, 1923.

THE ST. THOMAS' SCHOOL BILL, 1923;

(as amended by the Select Committee).

[NOTE.—All changes made by the Select Committee have, so far as possible, been underlined.]

A

BILL

to provide for the management and future location of St. Thomas' School and for the making over of certain land for the compound of St. Thomas' Church in Calcutta to certain ecclesiastical authorities.

Preamble

WHEREAS it is expedient, in order to place the affairs of St. Thomas' School in Calcutta (hitherto known as the Calcutta Free School) on a legal and stable basis, to provide for the management and future location of the said school and for the making over of certain land for the compound of St. Thomas' Church in Calcutta to certain ecclesiastical authorities;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be called the St. Thomas' School Act, 1923.

(2) This section and section 2 shall come into force at once, and the remainder of the provisions of this Act shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

CONSTITUTION.

Constitution of the Governors

2. (1) The Governors of St. Thomas' School (hereinafter referred to as the Governors) shall be—

(a) the Lord Bishop of Calcutta;

(b) the Archdeacon of Calcutta;

(c) the Master of the Calcutta Trades Association for the time being;

(d) one person of either sex to be nominated by the Bengal Chamber of Commerce;

(e) one person of either sex to be nominated by the Anglo-Indian and Domiciled European Association of Bengal;

(f) one European or Anglo-Indian Commissioner of the Corporation of Calcutta to be nominated by the Corporation; and

(*Clauses 3—5.*)

(*g*) the following persons, of either sex, being members of the Church of England, namely:—

(*i*) one person to be nominated by the Governor General of India;

(*ii*) two persons to be nominated by the Governor of Fort William in Bengal;

(*iii*) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta;

(*iv*) two persons to be nominated by the vestry of St. John's Church, Calcutta; and

(*v*) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore.

(*2*) The Governors may at a meeting co-opt with themselves such persons, of either sex, not exceeding three in number, as they may consider necessary. Such persons shall be deemed to be Governors for the purposes of this Act.

(*3*) If any of the bodies referred to in clauses (*d*), (*e*) and (*f*) and sub-clauses (*iii*) to (*v*) of clause (*g*) of sub-section (*1*) does not by such date as may be prescribed by the Local Government nominate the Governors mentioned therein, the Local Government shall nominate qualified persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

(*4*) The names of the nominated and co-opted Governors shall be published in the *Calcutta Gazette*.

Incorporation of the Governors.

3. The Governors shall be a body corporate by the name of the "Governors of St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Period of office of Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the *Calcutta Gazette*:

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the *Calcutta Gazette*:

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

Quorum.

5. (*1*) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

(*2*) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

(*Clauses 6—9.*)

Power to appoint new Governors.

6. If a nominated or co-opted Governor—

(*a*) dies, or

(*b*) is absent from the meetings of the Governors for more than six consecutive months, or

(*c*) desires to be discharged, or

(*d*) refuses to act or becomes incapable of acting, the authority which nominated or co-opted him may in cases (*b*) to (*d*) declare his post to be vacant and may in cases (*a*) to (*d*) nominate or co-opt, as the case may be, a new Governor to fill such vacancy for the unexpired remainder of the term for which such Governor would otherwise have continued in office.

MANAGEMENT AND PROPERTY OF ST. THOMAS' SCHOOL.

Change in the name of the school and vacation of office by existing Governors

7. From the date when this section comes into operation—

(*i*) the Calcutta Free School shall be known as St. Thomas' School, and

(*ii*) the term of office of all persons then acting as Governors of the school shall cease and the St. Thomas' School Society shall cease to have any connection with the management of the school.

Property to vest in the Governors

8. (*1*) All property, movable or immovable, which at the date when this section comes into operation appertains to the Calcutta Free School or is held by or on behalf of the persons then acting as Governors of the school or by the St. Thomas' School Society for the purposes of the school (including the premises specified in the First Schedule) shall, together with any property movable or immovable, which may thereafter be given, bequeathed, transferred or acquired for the purposes mentioned in section 11, vest as and from such date in the Governors of St. Thomas' School as constituted by section 3 for the purposes of the school:

Provided that the Governors shall apply any funds which up to that date have been held in trust for specific purposes in connection with the school including the funds set forth in the Second Schedule, and any funds which may thereafter be so held, to the purposes for which they are held in trust.

(*2*) All liabilities which at the said date have been incurred by the persons then or theretofore acting as Governors or by the St. Thomas' School Society for the purposes of the school shall be deemed to be, and are hereby declared thereafter to be, liabilities of the Governors of St. Thomas' School as constituted by section 3.

Powers to Governors to remove school from present site and dispose of that site.

9. The Governors are hereby authorised to carry out the removal of the school from the site in Free School Street where it is in part located, to such other site or sites as the Governors may, with the sanction of the Local Government, determine and the Governors are hereby empowered in that behalf to sell, lease, mortgage, or otherwise dispose of the present premises in Free School Street and the site thereof and to acquire by purchase or otherwise a suitable site or sites and to erect buildings for the purposes of the school as the Governors may, with the sanction of the Local Government, determine.

(*Clauses 10—14.*)

Power to Governors to delegate their powers and to appoint teachers and officers.

10. The Governors shall have power from time to time—

(*a*) to delegate, subject to such conditions as they think fit, any of their powers to sub-committees consisting of such Governors as they shall think fit;

(*b*) to appoint a Secretary and to fix his remuneration, if any; and

(*c*) to appoint such persons as they shall think fit to employ for the purposes of the school (including school-teachers, boarding-masters, matrons, sergeants, clerks, officers and servants) and to fix their remuneration.

Purposes of St. Thomas' School

11. The purposes of St. Thomas' School are hereby declared to be as follows and, save as is otherwise herein provided, all property vested in the Governors by or under this Act shall be deemed to be held in trust for the said purposes and not otherwise:—

(*1*) the maintenance of an efficient school, and

(*2*) the provision of a sound education, with religious instruction in accordance with the principles of the Church of England, for the children of Europeans and Anglo-Indians:

Provided that in the interpretation of the terms 'European' and 'Anglo-Indian' the Governors shall have due regard to any definition of those terms which may be included in the Code of Regulations for European Schools.

This Act not to preclude Governors from conforming to the regulations of the Local Government.

12. The Governors shall not be precluded by any provision in this Act from conforming to any regulations which the Local Government may impose as the conditions of a grant of money to the school.

MAKING OVER OF LAND FOR THE COMPOUND OF ST. THOMAS' CHURCH.

Compound of St. Thomas' Church

13. (*1*) The Governors are further authorised in such manner as they deem fit to make over to, and to vest in, the Lord Bishop of Calcutta and the Archdeacon of Calcutta conjointly such land (the property of the Governors), adjacent to St. Thomas' Church and not exceeding, when taken together with the land consecrated with the St. Thomas' Church building, two bighas in all, as they may deem to be necessary for the convenient user of that Church for the purposes of the Church of England.

(*2*) The boundaries of such land shall be delineated on the ground and approved by the Local Government before action is taken by the Governors under sub-section (*1*).

PROVIDENT FUND.

Power to Governors to establish a Provident Fund, or Funds

14. The Governors may, with the approval of the Local Government, establish a provident fund or provident funds for the benefit of their teachers, other officers or servants (appointed in accordance with the provisions of this Act) and may compel all or any of such teachers, officers and servants to contribute to, and may make supplementary contributions to, such provident fund or funds and make payments thereout in accordance with the rules of such fund.

(*Clause 15.*)

RULES.

Power to Governors to make rules

15. The Governors may from time to time make rules for any of the following purposes, namely :—

(*a*) for their own guidance and for the conduct of their business;

(*b*) to determine the persons by whom orders for payment of money, contracts, transfers and other documents may be signed on behalf of the Governors ;

(*c*) for the management and control of the school in all its departments, including any hostel that may be established in connection with the school;

(*d*) regulating the proceedings of sub-committees;

(*e*) prescribing the rates and the conditions under which contributions may be paid by the Governors and their officers, teachers and servants to the provident fund or funds which may be established under section 14, and determining the conditions of payments from such fund or funds.

THE FIRST SCHEDULE.

(*See* section 8.)

(1) With the exception of the St. Thomas' Church building and the land consecreted therewith, measuring one hundred and eighteen feet by fifty-nine feet, the site with buildings thereon known as the Calcutta Free School, situated at 58, Free School Street, 28, Marquis Street, and 6, Marquis Lane, Calcutta, measuring about thirty-one bighas, and bounded as follows:—

"On the north by pucca houses, a small Church known as St. Joseph's (Madrasi) Chapel and Market Street; on the south by a house and Marquis Street; on the east by a house and Collin Street (formerly called Collinga Bazar Street); and on the west by Free School Street."

(2) The leasehold of the land and buildings, known as Kidderpore House, situated on 4, Diamond Harbour Road, in Kidderpore in the district of the 24-Parganas, containing an area of twenty-one decimal nought four acres or thereabouts, and bounded as follows:—

"On the north by St. Stephen's Church compound and Government land of the Cattle Market; on the north-east corner by the Orphangunge Road; on the east by the premises of the Zoological Gardens and the Meteorological Observatory compound; on the south by the land of the lines of the Governor's Body Guard; and on the west by the compound of St. Stephen's Parsonage and Diamond Harbour Road."

THE SECOND SCHEDULE.

(*See* section 8.)

LIST OF FUNDS.

1. Provident Fund.
2. Retiring Allowance Fund.
3. Apprentice Fund.
4. Thompson "Rex Ludorum" Fund.
5. Samuel Benjamin Taylor Fund.

THE THIRD SCHEDULE.

(*Omitted.*)

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1847 L., dated Calcutta, the 23rd July, 1923.—The following Report of the Select Committee on the Calcutta Improvement (Amendment) Bill, 1923 (with the Bill as amended by the Committee) is hereby published for general information :—

REPORT OF THE SELECT COMMITTEE ON THE CALCUTTA IMPROVEMENT (AMENDMENT) BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill further to amend the Calcutta Improvement Act, 1911, was referred, have considered the Bill and the Papers noted at the end of this paragraph, and have the honour to submit this, our report, with the Bill, as amended by us annexed hereto.

Paper No. 1.

Letter No. 2697-J., dated the 3rd May, 1923, from the Secretary to the Government of Bengal, Judicial Department.

Papers No. 2.

(1) Letter No. OA-38—14-23, dated the 30th May, 1923, from the Accountant-General, Bengal.

(2) Letter, dated the 30th May, 1923, from the Assistant General Secretary, European Association.

(3) Letter, dated the 29th May, 1923, from the Secretary, Anglo-Indian and Domiciled European Association.

(4) Letter No. 12-L., dated the 1st June, 1923, from the Honorary Secretary, the Muhammadan Literary Society.

Papers No. 3.

(1) Letter, dated the 6th June, 1923, from the Secretary, Indian Association.

(2) Letter No. 8-C.M.—7-1923, dated the 11th June, 1923, from the Secretary, Calcutta Trades Association.

Papers No. 4.

(1) Letter, dated the 13th June, 1923, from the Joint Secretary, Mahajan Sabha.

(2) Letter No. 742-O, dated the 14th June, 1923, from the Secretary, Indian Tea Association.

Papers No. 5.

(1) Letter No. 351-D., dated the 15th June, 1923, from the Secretary, Indian Jute Mills Association.

(2) Letter No. 117, dated the 18th June, 1923, from the Honorary Secretary, Marwari Association.

Papers No. 6.

(1) Letter No. XI-3, dated the 19th June, 1923, from the Chairman, Calcutta Improvement Trust.

(2) Letter No. 508—F-9, dated the 21st June, 1923, from the Honorary Secretary, Bengal National Chamber of Commerce.

Paper No. 7.

Letter No. 1949—1923, dated the 28th June, 1923, from the Secretary, Bengal Chamber of Commerce.

Paper No. 8.

Letter No. 299, dated the 9th July, 1923, from the Secretary, British Indian Association.

2. On the Committee assembling, the Hon'ble the Member in charge informed the other members that the Corporation of Calcutta had asked for further time to consider the Bill. If this had been granted, it would have been impossible to place the Bill again before the present Council. Government had however considered very carefully the question as to whether the Bill should be curtailed and confined to certain non-controversial and urgent clauses. On the whole, he was of opinion that it was not desirable to pass the Bill in its original form through the Council during the August session. Sufficient time was not available for the full consideration of certain controversial points which had been raised in various opinions, received in connection with the Bill. Moreover, the Corporation wished to propose changes in other sections of the Act, which were not touched by the Bill. He was prepared to give them time to mature their proposals with the object of legislating next year. He asked the Select Committee to recommend, therefore, that only those portions of the Bill which are of a really emergent nature be placed before the Legislative Council at the consideration stage. The two points which require immediate settlement are the amendment of the wording of section 54, the interpretation of which is in dispute between the Corporation and the Improvement Trust, and the raising of the rate of interest in sections 78 and 79 of the Act from four to six per cent.

On consideration of the position we have accepted the proposal of the Hon'ble the Member in charge that the Council be asked to proceed only with the abovementioned portions of the Bill.

We have discussed the proposed amendment of section 54, and it has been announced by the Chairman of the Calcutta Corporation and the Chairman of the Improvement Trust that an equitable agreement has been come to in regard to the question of compensation for lands and buildings of the Corporation taken over by the Trust for the purposes of an improvement scheme. We are agreed that the details of the settlement of the dispute should be embodied in the Act and have made an amendment in section 54 accordingly. This amendment carries out the proposals made in the original Bill in sub-clause (*1*) of clause 15 and in sub-clause (*3*) of that clause, but it has also been agreed that the determining factor in regard to the question of payment of compensation by the Board to the Corporation in respect of lands taken over under section 54 should be the question whether the land taken over is going to be returned to the Corporation in accordance with the provisions of section 65 when the improvement scheme has been completed. If the land is so returned—in other words, forms an integral and permanent part of the scheme—the Corporation will be compensated for the temporary loss of it by its improved value on the completion of the improvement scheme. If it is not so returned, but is sold by the Trustees for recoupment purposes, compensation should be payable to the extent of the market value of the land as at the date of declaration made under section 6 of the Land Acquisition Act in respect of other lands scheduled for acquisition within the scheme. Compensation should be payable in all cases for buildings belonging to the Corporation and taken over by the Board.

We have also discussed the question of the amendment of sections 78 and 79 of the Act in regard to the rate of interest payable under those sections. The proposal to raise the rate to six per cent. appears in clause 21 of the Bill, that is to say, in clause (*ii*) of sub-section (*5*) of the proposed new section 78, and in sub-section (*8*) of the said section and also in the amendment to section 79 proposed in clause 22.

With one dissentient we consider that the raising of the rate of interest to six per cent. is justified, but we consider that in cases where the rate has already been fixed in accordance with the Act and where the agreement under the Act has already been executed, or is executed within two months after the coming into force of the increased rate, the old rate of four per cent. should be applied. A modified proposal to this effect is embodied in clause 3 of the revised Bill.

We recommend that the revised Bill as attached to this Report be taken into consideration and passed as amended by us, the Bill in its original form being not considered further. The amendments suggested in the clauses

dealt with are on matters of working and, as those clauses have already been laid before the public, we do not consider that the Bill has been so altered as to require republication.

3. The Bill was published in English in the *Calcutta Gazette* of the 21st March, 1923.

S. N. BANERJEA
(*Member in charge*).
H. P. DUVAL.
S. W. GOODE.
T. EMERSON.
DEBI PROSAD KHAITAN.
D. J. COHEN.
S. N. MALLIK.
NITYA DHONE MUKHERJI.
D. C. GHOSE.
HARENDRA NATH CHAUDHURI.
S. MAHBOOB ALEY.
H. BARTON.
AMULYA DHONE ADDY.*
W. L. CAREY.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

CALCUTTA;
The 23rd July, 1923.

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* Signed subject to the note of dissent annexed.

Note of Dissent by Babu Amulya Dhon Addy, M.L.C.

The first proviso of clause 4 and clause 7 should be omitted on the following grounds :—

(1) When wards 19 to 25 of the Calcutta Municipality were added to the town of Calcutta, no concession was shown to the rate-payers of the said added area. The same consolidated rate has been levied on them since 1889 as that on the rate-payers of the town proper. I do therefore fail to understand as to why the total amount of rates on lands and buildings in Manicktala, Cossipore-Chitpur and Garden Reach should not be increased during the year 1924-25 and as to why the Corporation of Calcutta should be authorised to fix a lower rate on the annual valuation of the newly added area than that in the town of Calcutta during the years 1925-26 to 1928-29, specially as the annual valuation of holding in the newly added area is, in the opinion of the Assessor of the Calcutta Corporation, very low.

(2) At present, the owners and occupiers of small holdings in the newly added area are assessed more heavily than those of big holdings, for in Cossipore-Chitpur the latrine-fee on holdings up to an annual valuation of Rs. 100 (one hundred rupees) is at the rate of 11 per cent. (eleven per cent.) while on holdings of the valuation of Rs. 400 (four hundred rupees) and upwards it is at the rate of 5 per cent. (five per cent.) subject to a maximum of Rs. 480 (four hundred and eighty rupees) per annum. In Manicktala, as will appear from the Report of the Government Boundary Committee, the aggregate rate on holdings up to an annual valuation of Rs. 100 (rupees one hundred) is 28·2 per cent. (twenty-eight point two per cent.) while that on holdings of the annual valuation of Rs. 3,000 (rupees three thousand) and upwards is 19·5 per cent. (nineteen point five per cent). It is therefore thus desirable that all rate-payers should be similarily taxed as in Calcutta. The municipal rates on the poor should not in any way be higher than those on the rich as in the newly added area.

(3) As will appear from the proceedings of the meeting of the Calcutta Corporation held on the 9th January, 1923, that they shall have to incur a capital expenditure of Rs. 90,00,000 (rupees ninety lakhs) for the improvement of the drainage, water-supply and lighting of Cossipore-Chitpur and Manicktala. They shall have certainly to incur not less than Rs. 20,00,000 (rupees twenty lakhs) for similar improvements in Garden Reach. Is it not therefore desirable that the rate-payers of the newly added area should be called upon to pay the same rate as those of the town of Calcutta to pay at least the interest of the loan to be raised for the execution of the said works, specially as the owners of holdings in the newly added area shall not have to pay an additional stamp duty at the rate of 2 per cent. (two per cent.) on instruments of sale of immovable property as in the case of the town of Calcutta under section 82 of the Calcutta improvement Act ?

(4) The sanitary condition of the newly added area, specially Manicktala, is not a satisfactory one and as under section 90 of the new Calcutta Municipal Act, the Corporation shall have to spend annually not less than three lakhs of rupees (Rs. 3,00,000) for the newly added area in the execution of original improvement works from the third year and as the new Corporation will consist of thirteen ward Commissioners elected by the rate-payors of the newly added area, there is not the least doubt that the Corporation shall have to provide substantial amounts from the very commencement of the new Act for the improvement of the said area.

(5) In the very first year of the commencement of the Act, a very substantial amount is likely to be entered in the budget for the improvement of the newly added area as out of twenty-one members of the Budget Special Committee, including the Chairman, eight members will be elected by the Commissioners of the newly added area.

(6) Undue favour appears to have been shown to the rate-payors of the newly added area though for one year as the town of Calcutta, including the area added in 1889, paying a revenue of one crore and fifty-eight lakhs of rupees in 1921-22 shall have only twelve representatives in the Budget Special Committee excluding the Chairman thereof, while the rate-payers of the newly added area paying an aggregate revenue of only Rs. 10,72,000 (rupees ten lakhs and seventy-two thousand) in the same year shall have eight repesentatives in the said Special Committee.

THE CALCUTTA IMPROVEMENT (AMENDMENT) BILL, 1923,

(as amended by the Select Committee.)

A

BILL

further to amend the Calcutta Improvement Act, 1911.

WHEREAS it is expedient further to amend the Calcutta Improvement Act, 1911, in the manner hereinafter appearing; Ben Act V of 1911

And whereas the previous sanction of the Governor-General has been obtained, under section 80A, sub-section (*3*), of the Government of India Act, to the passing of this Act: 5 and 6, Geo V, c 61; 6 and 7, Geo V, c 37; 9 and 10, Geo V, c 101

It is hereby enacted as follows:—

Short title

1. This Act may be called the Calcutta Improvement (Amendment) Act, 1923.

New section substituted for section 54 of Bengal Act V of 1911

2. For section 54 of the said Act the following shall be substituted, namely:—

Transfer to Board, for purposes of improvement scheme, of building or land vested in the Corporation or in the Commissioner of a Municipality

"54. (*1*) Whenever any building, or any street, square, or other land, or any part thereof, which—

(*a*) is situated in the Calcutta Municipality and is vested in the Corporation, or

(*b*) is situated in any part of any Municipality constituted under the Bengal Municipal Act, 1884, in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

is within the area of any improvement scheme and is required for the purposes of such scheme, the Board shall give notice accordingly to the Chairman of the Corporation or the Chairman of such Municipality, as the case may be, and such building, street, square, other land or part, shall thereupon vest in the Board subject to the payment of compensation, if any, to the Corporation or to such Commissioners, as the case may be, under sub-section (*3*).

(*2*) Where any land vests in the Board under the provisions of sub-section (*1*) and the Board make a declaration to the Corporation that such land will be retained by the Board until either a declaration is made by the Corporation under sub-section (*1*) of section 65, or a resolution is passed by the Board under sub-section (*2*) of that section, no compensation shall be payable by the Board to the Corporation in respect of that land.

(*3*) Where any land or building vests in the Board under sub-section (*1*) and no declaration is made by the Board that the land will be so retained, the Board shall pay to the Corporation, or to the

(Clauses 3-4.)

Commissioners, as the case may be, as compensation for the loss resulting from the transfer of such land or building to the Board, a sum equal to the market value of the said land or building at the time when the general declaration in respect of other lands included in the scheme is made under the provisions of section 6 of the Land Acquisition Act, 1894, as amended by this Act, and where any building, situated on land in respect of which a declaration has been made by the Board under sub-section (*2*), is vested in the Board under sub-section (*1*), like compensation shall be payable in respect of such building by the Board.

(*4*) If the Board fail to retain any land or any portion of land in accordance with the provisions of sub-section (*2*) after having declared their intention so to retain it, like compensation shall be payable by them to the Corporation in respect of such land.

(*5*) If any question of dispute arises—

(*a*) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (*3*) or sub-section (*4*), or

(*b*) as to whether any building or street, or square or other land, or any part thereof is required for the purposes of the scheme,

the matter shall be referred to the Local Government, whose decision shall be final."

Amendment of section 78.

3. (*1*) (*i*) In clause (*ii*) of sub-section (*4*) and in sub-section (*8*) of section 78 of the said Act, for the words "four *per cent.*" the words "six *per cent.*" shall be substituted ; and

(*2*) (*ii*) to that section the following shall be added, namely :—

"(*10*) Notwithstanding anything contained in clause (*ii*) of sub-section (*4*) or in sub-section (*8*) the rate of interest payable, under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, four *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (*3*) before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and the agreement in respect of the payment of the same is executed before, on or within two months after, that date."

Amendment of section 79.

4. In section 79 of the said Act for the words "four *per cent.*" the words "six *per cent.*" shall be substituted.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1848L., dated Calcutta, the 23rd July, 1923.—The following Report of the Select Committee on the Calcutta Municipal (No. II) Bill, 1923, (with the Bill, as amended by the Committee), is hereby published for general information.

REPORT OF THE SELECT COMMITTEE ON THE CALCUTTA MUNICIPAL (No. II) BILL, 1923.

We, the undersigned members of the Select Committee, to which the Bill to provide for certain matters in connection with the Budget Estimates of the Corporation of Calcutta for the year 1924-25, the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed, and the arrangements to be made in connection with the raising of loans during that year, for the fixing of the percentage of the consolidated rate in respect of the added areas during the four succeeding years and for the amendment of section 20 of the Calcutta Municipal Act, 1923, in respect of the qualification of electors, was referred, have considered the *Bill* and have the honour to submit this, our report, with the *Bill*, as amended by us, annexed hereto. In reprinting the Bill, all changes made by us have, so far as possible, been underlined.

2. The more important changes are as follows :—

Preamble.—We have made two minor drafting alterations which call for no remark.

Clause 3.—We consider that, with a view to expedition, the scrutiny of the Budget, as framed by the Chairman, should be made by a Special Committee appointed somewhat in the manner laid down in the Thirteenth Schedule to the Act of 1888.

We have added to the number of members that shall serve on this Committee from the Cossipore and Maniktala Municipalities. The Garden Reach Municipality, we consider, is adequately represented under the Bill.

We have provided for the representation of the Corporation on this Special Committee by placing on the Committee eight Commissioners elected from among the ward Commissioners and four Commissioners elected from among the nominated Commissioners.

Clause 4.—The Special Committee will report direct to the Corporation. It is hoped that this will eliminate the present lengthy procedure under which the Corporation, after receiving the General Committee's revised Budget, refer the same again to another Committee of their own before considering the Budget.

We have provided, in the usual manner, against failure by the Commissioners of the municipalities included in the added areas to elect their representatives to the Special Committee.

We have provided that the Commissioners from the added areas who will serve on the Special Committee shall also serve on the Corporation when that body considers the final Budget Estimates and proposals as framed by the Special Committee.

We have also provided against default by the Special Committee or by the Corporation in the final framing, and in the passing, of the Budget Estimates and proposals.

We have considered the proviso to the original clause 4, and in our opinion the situation for the year 1924-25 will best be met by arrangements under which the totals of the rate on holdings, lighting rate, water rate and the latrine fees levied in respect of a holding in any of the added areas under the Bengal Municipal Act shall be deemed to be the consolidated rate levied under the Calcutta Municipal Act, 1923, for the year 1924-25.

It is necessary, however, to provide for the assessment of any new building in the said areas which otherwise would escape taxation altogether during that year and we have made a provision accordingly.

Some members of the Committee wish to widen *clause 7* so as to give more relief to the added areas. Others wish to restrict the relief by confining it to the period during which the added areas are receiving no benefit under section 90 of the Calcutta Municipal Act, 1923. The majority of us, however, consider that the clause as framed should stand as an equitable working arrangement.

Clause 8.—We have considered the proposed modification of clause 8, and we are of opinion that the 30th day of September preceding the election is the correct final date to be taken.

We consider that, in view of the provisions of section 25, it is better to omit the first proviso to sub-clause (*a*) of clause 20 which is likely to create difficulty. We have made some other drafting alterations in the clause and made it more specific.

The insertion of the words " or having been " in sub-clauses (*a*), (*b*) and (*c*) is made with a view to taking in cases such as those of a person who is still residing in the ward but has changed his place of residence therein and also cases of persons who have changed their professions, etc.

Clause 9.—We realize that in the transitory period between the old system and new system of assessment (*i.e.*, in 1924-25) anomalous cases may arise, in which it is necessary that the Corporation should be able to apply equitable principles in modification of the strict letter of the law and also to prevent evasion. We have therefore, at the request of the Calcutta Corporation, inserted an enabling sub-clause in clause 9 to deal with this matter.

S. N. BANERJEA
(*Member in charge*).

SURENDRA NATH ROY.
H. P. DUVAL.
S. N. MALLIK.*
S. W. GOODE.*
JATINDRA NATH BASU.
S. R. DAS.
D. J. COHEN.*
FANINDRA LAL DE.
A. WILLIS.
HEM CHANDRA NASKAR.
S. MAHBOOB ALEY.
ABDUS SALAM.†
AMULYADHONE ADDY.‡
D. C. GHOSE.

C. TINDALL,
Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

CALCUTTA ;
The 23rd July, 1923.

* This member signs subject to his note of dissent to be sent in later.
† This member signs subject to his note of dissent, if any.
‡ This member signs subject to his note of dissent annexed.
NOTE.—Mr. Syed Nasim Ali and Maulvi A. K. Fazlul Haque did not attend any of the meetings of the Select Committee.

Note of Dissent by Babu Amulyadhon Addy, M.L.C.

Clauses 4 and 5 should be omitted on the following grounds :—

(1) Even ancestral dwelling-houses which are regarded as sacred by the Indians are acquired to recoup the cost of construction of roads with the drainage, sewering, water-supply and lighting thereof and the owners of the said houses are called upon to pay heavy sums for the exemption of the said houses from acquisition notwithstanding the fact that the opening of roads not only increases the value of adjacent lands but also improves the sanitation of the locality in which the public-at-large are benefited.

(2) I admit an interest at the rate of 6 per cent. (six per cent.) on loans is reasonable, but I am strongly of opinion that it would be unreasonable on exemption fees which are fixed by the Board and against whose decision the persons aggrieved have no right of appeal to a higher and disinterested authority.

If the said suggestion is not accepted, then the words "not exceeding six per cent." may be substituted for the words "six per cent." so that the Board may fix the rate of interest from time to time having regard to the state of the money-market of Calcutta and specially the rate of interest which is paid by the Government of India on Promissory Notes.

It is regrettable that the Select Committee have thought it fit to amend the Calcutta Improvement Act simply by giving unlimited powers to the Board for the acquisition of surplus lands and by increasing the rate of interest on exemption fees from 4 to 6 per cent. (four to six per cent.) per annum. It is also regrettable that the suggestions of the public bodies to which the original Bill was referred for opinion, namely the constitution of the Board, Right of Appeal to the High Court on questions of fact and extension of the Improvement Act to Tollygunge and South Suburban Municipalities have been ignored by the Select Committee.

THE CALCUTTA MUNICIPAL (No. II) BILL, 1923;

(as amended by the Select Committee.)

[NOTE.—All changes made by the Select Committee have, so far as possible, been underlined.]

A BILL

to provide for certain matters in connection with the Budget Estimate of the Corporation of Calcutta for the year 1924-25, the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and the arrangements to be made in connection with the raising of loans during that year, for the fixing of the percentage of the consolidated rate in respect of the added areas during the four succeeding years, and for the amendment of section 20 of the Calcutta Municipal Act, 1923, in respect of the qualification of electors.

Preamble.

WHEREAS it is expedient to give to representatives of the Commissioners of the municipalities which are to be included in Calcutta, under the provisions of the Calcutta Municipal Act, 1923, an opportunity of taking part in the framing and passing of the Budget Estimate of the Corporation of Calcutta for the year 1924-25, in the fixing of the rates at which the consolidated rate and the taxes for that year shall be levied and imposed and in the arrangements that are to be made for the raising of any loan during that year, and so to provide for the framing and passing of the said Budget Estimate, the fixing of the said rate and the arrangements for the said loans; Ben. Act III of 1923.

And whereas it is expedient that the Corporation do fix for the year 1924-25 a favourable percentage in respect of the levy of the consolidated rate on lands and buildings in each of the areas added to Calcutta by the Calcutta Municipal Act, 1923, and that they have power to fix a special percentage in respect of the lands and buildings in any such areas during the four succeeding years;

And whereas it is expedient to amend section 20 of the said Act in respect of the minimum amount to be paid by a person as consolidated rate, tax or rent so as to entitle him to be an elector;

It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Calcutta Municipal (No. II) Act, 1923.

(*2*) It extends to Calcutta as defined in clause (*11*) of section 3 of the Calcutta Municipal Act, 1923.

Manner of preparation and passing of Budget Estimate of the Calcutta Corporation for 1924-25, etc.

2. Notwithstanding anything contained in the Calcutta Municipal Act, 1899, or in the Calcutta Municipal Act, 1923, the Budget Estimate of the Corporation of Calcutta for the year 1924-25 for the purposes of the Calcutta Municipal Act, 1923, shall be prepared and passed, and the rates at which the consolidated rate and the taxes for the said year for the said purposes shall be levied and imposed shall be determined and fixed, and the sums of money, if any, that Ben. Act III of 1899. Ben. Act III of 1923

(*Clause 3.*)

shall be borrowed in the said year for the said purposes shall be determined, in the manner set forth in sections 3 to 5.

Preparation of Budget Estimate and reference to General Committee.

3. (*1*) The Budget Estimate of income and expenditure for the year 1924-25 of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, shall be prepared, with reference to the area specified in Schedule I to that Act and for the purposes of that Act, by the Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and the said Chairman shall, on or before the tenth day of January, 1924, place the same, together with a statement of proposals as to the taxation which it will, in his opinion, be necessary or expedient to impose under the Calcutta Municipal Act, 1923, in the year 1924-25, before the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, at a special meeting convened for the purpose, and the Corporation of Calcutta, as so constituted, shall forthwith refer the said Budget Estimate and proposals for consideration to a Special Committee which shall consist of the following members:—

Ben Act III of 1923.

Ben. Act III of 1899.

(*i*) the Chairman of the Calcutta Corporation;

(*ii*) eight Commissioners of the Calcutta Corporation to be elected by the Corporation at the said special meeting from among the ward Commissioners;

(*iii*) four Commissioners of the Calcutta Corporation to be elected by the Corporation at the said special meeting from among the appointed Commissioners;

(*iv*) three Commissioners of the Cossipore-Chitpur Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924;

(*v*) three Commissioners of the Maniktala Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924; and

(*vi*) two Commissioners of the Garden Reach Municipality, to be elected by the Commissioners of that Municipality at a special meeting held before the first day of January, 1924:

Provided that, if the Commissioners of any of the municipalities referred to in clauses (*iv*), (*v*) and (*vi*) fail to elect the full number of members to be elected by them by the first day of January, 1924, the Local Government shall nominate a sufficient number of persons to complete the said number and such persons shall be deemed to be members duly elected by the said Commissioners.

(*1a*) The names of the members of the Special Committee shall be published in the *Calcutta Gazette*.

(*Clause 4.*)

(*1b*) The Chairman of the Calcutta Corporation shall be Chairman of the Special Committee, and the procedure of the Special Committee shall be in accordance with the rules made for the business of Standing Committees of the Corporation of Calcutta.

(*2*) The Special Committee, as so constituted, shall, on or as soon as may be after the tenth day of February, 1924, consider the estimates and proposals submitted by the Chairman of the Corporation and subject to such modifications and additions therein or thereto as they may think fit to make, shall prepare a Budget Estimate of income and expenditure of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, for the year 1924-25, and shall propose the levy of the consolidated rate and other taxes for that year at such rates as they may deem necessary. Ben. Act III of 1923.

Passing of Budget Estimate, etc.

4. (*1*) The Budget Estimate, as finally framed by the said Special Committee, together with a statement of proposals as to the taxation which it will, in the opinion of the Special Committee, be necessary or expedient to impose under this Act in the year 1924-25, shall be placed before the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, on or before the seventh day of March, 1924, and the said Corporation shall consider, on behalf of the Corporation of Calcutta to be constituted under the Calcutta Municipal Act, 1923, the said proposals of the Special Committee, and in so doing shall apply thereto the provisions of the Calcutta Municipal Act, 1923, so far as in their opinion these can be suitably applied, and shall, on or before the twenty-second day of March, 1924, pass the same Budget Estimate, subject to such further modifications or additions as to them shall appear to be expedient, and shall fix, with reference to the Budget Estimate as so passed, the rates at which the consolidated rate and the taxes mentioned in the Calcutta Municipal Act, 1923, shall be levied and imposed for the year commencing on the first day of April, 1924, and the sums of money (if any) which shall be borrowed during the said year for the purposes of the Calcutta Municipal Act, 1923 : Ben. Act III of 1899.

Provided that, notwithstanding anything contained in the Calcutta Municipal Act, 1923, the total amount by way of—

(*i*) the rate on holdings,

(*ii*) the lighting rate (if any),

(*iii*) the water rate (if any), and

(*iv*) the latrine fees (if any),

assessed in respect of any holding in any of the areas added to Calcutta by the Calcutta Municipal Act, 1923, shall be deemed to be the consolidated rate levied under the provisions of the Calcutta Municipal Act 1923, in respect of lands and buildings included in such holding for the year 1924-25 for all the purposes of that Act :

Provided also, that if any new building, as defined in the Calcutta Municipal Act, 1923, is erected during

(*Clause 5.*)

the year 1924-25 on any premises in any of the said areas, the Executive Officer may cause such building to be valued, and the consolidated rate on the premises shall be levied at the rate, fixed for that year for the purpose of the levy of the consolidated rate on lands and buildings in Calcutta generally. The valuation so made shall remain in force until the next general re-valuation of the ward under the provisions of the Calcutta Municipal Act, 1923. Ben Act III of 1923.

(2) For the purposes of this section, notwithstanding anything contained in the Calcutta Municipal Act, 1899, the Corporation of Calcutta shall be deemed to include the additional members referred to in clauses (*iv*), (*v*) and (*vi*) of sub-section (*1*) of section 3. Ben. Act III of 1899

(*3*) If the Special Committee fail to submit to the Corporation of Calcutta by the seventh day of March, 1924, the Budget Estimate and proposals referred to in sub-section (*2*) of section 3, the Budget Estimate and proposals of the Chairman referred to in sub-section (*1*) of that section shall be deemed to be the Budget Estimate and proposals of the Special Committee finally framed and duly made in accordance with this Act and the Corporation shall consider them accordingly. If the Corporation of Calcutta fail to consider and to pass by the twenty-second day of March, 1924, the Budget Estimate of the Special Commitee, the Budget Estimate and proposals of the Special Committee shall be deemed to be the Budget Estimate and proposals of the Corporation of Calcutta duly made and passed under the provisions of this Act.

Validity of Budget Estimate for 1924-25, etc.

5. The Budget Estimate of the Corporation of Calcutta for the year 1924-25, as so passed, and the rates at which the consolidated rate and taxes shall be levied and imposed, as so determined and fixed, and the decision of the Corporation in respect of any loan or loans to be raised, shall, notwithstanding anything contained in the Calcutta Municipal Act, 1923, have for all the purposes of that Act full force and effect in Calcutta as defined in clause (*11*) of section 3 of that Act during the year 1924-25 and—

(*i*) the said Budget Estimate shall be deemed to be the Budget Estimate duly passed,

(*ii*) the consolidated rate and taxes levied and imposed at the rates so determined and fixed shall be deemed to be the consolidated rate and taxes duly levied and imposed, and

(*iii*) the loans, if any, incurred in accordance with the said decision shall be deemed to be loans duly incurred,

by the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1923, unless and until such Budget Estimate, consolidated rate and taxes and decision in regard to loans are added to, modified or varied by that Corporation and in accordance with the provisions of that Act.

(Clauses 6-8.)

Power to Chairman to inspect and take extracts from documents, etc.

6. The Chairman of the Corporation of Calcutta as constituted under the Calcutta Municipal Act, 1899, and any officer of the said Corporation specially empowered by him in this behalf shall from the commencement of this Act and notwithstanding anything contained in the Bengal Municipal Act, 1884, have power to inspect and take extracts from the assessment books and other records of the Maniktala, Cossipore-Chitpur, Garden Reach and Tollygunge Municipalities for all or any of the purposes of this Act and of the Calcutta municipal Act, 1923, and the Commissioners of the said Municipalities shall render to the said Chairman and to any such officer all assistance that he may require for the said purposes.

Ben. Act III of 1899.

Ben. Act III of 1884.

Ben. Act III of 1923.

Power to Corporation to fix lower percentage rate for the consolidated rate in respect of lands and buildings in added areas during the years 1925-26 to 1928-29.

7. Notwithstanding anything contained in the Calcutta Municipal Act, 1923, the Corporation, in fixing the rate at which the consolidated rate for any of the years 1925-26, 1926-27, 1927-28 or 1928-29 on lands and buildings in Calcutta generally shall be levied and imposed, may fix, in respect of the lands and buildings in any of the several areas referred to in sub-clauses *(i)* to *(v)* of clause *(1)* of section 3 of that Act, a rate at a lower percentage on the annual valuation than the percentage which is fixed for that year generally in respect of lands and buildings in Calcutta.

Amendment of section 20 of the Calcutta Municipal Act, 1923.

8. In section 20 of the Calcutta Municipal Act, 1923,—

(a) in sub-clause *(a)*—

(i) after the word "being" in the three places where it occurs the words "or having been" shall be inserted;

(ii) the first proviso shall be omitted;

(iii) for the second proviso the following shall be substituted, namely:—

"Provided that such payment has been made in respect of the twelve months ending on the 30th day of September last preceding the election."

(b) for sub-clause *(b)* the following shall be substituted, namely:—

"*(b)* being or having been the occupier of any premises valued for assessment purposes under this Act or, in the case of the first general election held under this Act, under the Calcutta Municipal Act, 1899, or of a portion of any such premises has, at any time during the twelve months ending the 30th September immediately preceding the election, paid rent for such occupancy for at least six months during the said twelve months at a rate not less than Rs. 25 per mensem, and has on application to the Executive Officer had his name entered in a Register to be maintained for the purpose."

(*Clause 9.*)

(*c*) for sub-clause (*c*) the following shall be substituted, namely:—

"(*c*) being or having been, for not less than six consecutive months during the twelve months ending the 30th September preceding the election, the owner of a hut in a bustee valued for assessment purposes under Chapter X, or in the case of the first general election held under this Act under the corresponding Chapter of the Calcutta Municipal Act, 1899, and on account of which a sum of not less than Rs. 12 has been paid during the said twelve months in respect of the consolidated rate, has on application to the Executive Officer had his name entered in a Register to be maintained for the purpose."

Power to remove difficulties.

9. If any difficulty arises in assessing and levying a consolidated rate for the year 1924-25 in respect of any of the lands, or of the lands and buildings, in the areas added to Calcutta by the Calcutta Municipal Act, 1923, the Local Government, on the recommendation of the Corporation, may make such order as to them shall appear to be necessary in order to enable the Corporation to assess and levy a consolidated rate for that year in respect of such land or such land and building. [*Cf.* XL of 1920, s. 10.]

Any such order may modify the provisions of this Act and of the Calcutta Municipal Act, 1923, so far as to the Local Government shall appear to be necessary for carrying the order into effect.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 1, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

ERRATA.

No. 1879L., dated the 26th July, 1923.—In notifications Nos. 1847L., and 1848L., dated the 23rd July, 1923, publishing the reports of the Select Committees on the Calcutta Improvement (Amendment) Bill, 1923, and the Calcutta Municipal (No. II) Bill, 1923, at pages 340 and 347, respectively, of Part IV of the *Calcutta Gazette* of the 25th idem—

(*i*) for the note of Dissent by Babu Amulya Dhone Addy, M.L.C., printed at pages, 343 and 344 of the said Gazette, *substitute* the note of Dissent at page 349 thereof, and

(*ii*) for the note of Dissent by Babu Amulya Dhone Addy, M.L.C., printed at page 349 of the said Gazette, *substitute* the note of Dissent at pages 343 and 344 thereof.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1926L., dated Calcutta, the 28th July, 1923.—With reference to the footnotes to the Report of the Select Committee on the Bengal Tenancy (Utbandi Amendment) Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923, and in continuation of this office notification No. 1845L., dated the 23rd July, 1923, it is notified that Maharaja Kshaunish Chandra Ray Bahadur, M.L.C., has appended the following Note of Dissent to the Report :—

THE BENGAL TENANCY (UTBANDI AMENDMENT) BILL, 1923.

Note of dissent by Maharaja Kshaunish Chandra Ray Bahadur.

I sign this report subject to this note of dissent. I take it as admitted on all hands that the system of Utbandi benefits both the tenants and the landlords. The Bill proposes to extend fully the advantages of the tenants and accelerate the acquisition of occupancy right and take away whatever privileges the landlords have. It is just and fair that the latter should be compensated for the loss. I propose, therefore, that the premium to be paid for the conversion should be at least 5 times the amount fixed as uniform annual rent. Most of the Judicial officers have recommended very rightly a higher rate of premium than that provided in sub-section (*9*). In fact, the landlords do realise sometimes as much as 10 times for such conversions ; while even for temporary Utbandi tenancy for a term of 3 to 5 years, premium to the extent of even 2 years' rent is realised from tenants. This income is a recurring one, while under the proposed law the premium will be paid once for all. The *solatium* of even 5 years' rent is a poor one if the fact that it will be spread over a term of 3 years be taken into account. Calculating the present worth it comes to less than 89 per cent. and the premium of 5 times the rent really dwindles to less than 4½. This is surely not too much in view of the fact that in reality the conversion will be really the first regular settlement of the zamindars' khas lands or at any rate making a tenant-at-will a regular *occupancy* raiyat and so the zamindar should not be deprived of what he ordinarily gets by such settlement.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1927L., dated Calcutta, the 28th July, 1923.—With reference to the Report of the Select Committee on the Calcutta Municipal (No. II) Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923, and in continuation of this office notification No. 1817L., dated the 23rd July, 1923, it is notified that Rai Dr. Haridhan Dutt Bahadur, M.L.C., has since signed the report subject to the following Note of Dissent :—

THE CALCUTTA MUNICIPAL (No. II) BILL, 1923.

Note of dissent by Rai Bahadur Dr. Haridhan Dutt, M.L.C.

Clause 3.—According to the constitution proposed in clause 3, the Special Committee which will be appointed to consider the Budget Estimates for 1924-25, will consist of 21 members including the Chairman. This, in my opinion, will make the Committee too unwieldy. The Committee which was constituted in 1888 consisted of 18 members, of whom 12 represented the Corporation and 6 represented the areas which were then amalgamated. I would retain the same number and proportion between the Corporation and outside representatives.

Clause 7.—On principle it is difficult to justify differentiation in the matter of taxation between the city proper and the areas proposed to be amalgamated. I am, however, prepared to waive the question of principle, and on the ground of expediency, to agree to a rebate for the first three years. I object to any concession beyond that as the statutory liability for expenditure will commence after 3 years from the commencement of the Act. I also object to the rebate being allowed for the whole of the amalgamated areas. Portions of them are highly developed and I see no reason why they should not pay the full rates. I would therefore restrict the provision up to 1926-27 and would limit the concession to such localities in each of these outside areas as the Corporation may prescribe. I realise that it will be discretionary and not obligatory on the Corporation to allow any rebate, but the intention is that the Corporation should exercise this discretion in favour of the amalgamated areas.

Clause 8.—The Select Committee have decided that the qualifying year for the municipal franchise should be that ending with 30th September and they have gone further and omitted the proviso which laid down that the names of owners and occupiers must appear in the Assessment Book. I apprehend serious practical difficulties in the preparation of the electoral rolls in time on this basis, but as the matter has been threshed out at very great length both in the Corporation and in the Select Committee, it is unnecessary for me to elaborate the arguments.

Clause 9.—The object of this provision is to give power to the Local Government to pass necessary orders to meet any difficulty that may arise in the assessment and the imposition of consolidated rates in the added areas during the first year of the new Act. The convenience of this provision is obvious, but it is rather unfortunate that a provision enabling Government to rectify defects in legal enactments by executive order should be necessary. The explanation for the present amending Bill and for a provision of this kind is to be found in the hurry with which the Calcutta Municipal Act of 1923 was dealt with in the Select Committee and in the Council.

NOTE.—Rai Bahadur Dr. Haridhan Dutt, M.L.C., has signed the report on the 24th July, 1923, after the report has been sent to press for publication in the *Calcutta Gazette*.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1930L., dated Calcutta, the 30th July, 1923.—With reference to the footnotes to the Report of the Select Committee on the Calcutta Suporession of Immoral Traffic Bill 1923 (A Bill for the suppression of Immoral Traffic in the town and suburbs of Calcutta and in the port of Calcutta) published in the *Calcutta Gazette*, dated the 25th July, 1923, and in continuation of this office notification No. 1836L., dated the 21st July, 1923, it is notified that Mr. Krishna Chandra Ray Chaudhuri, M.L.C., and Mr. F. E. E. Villiers, M.L.C., have appended the following Notes of Dissent to the Report :

Note of Dissent by Mr. Krishna Chandra Ray Chaudhuri, M.L.C.

I accord my whole-hearted support to the principle underlying the Bill, viz , suppression of immoral traffic in the city of Calcutta, by striking at the root of supply, but strongly object to the extraordinary powers proposed to be conferred on police officers under sub-section (*2*) of section 4 to arrest, without warrant, persons accused of solicitation or abetment of solicitation as defined in sub-section (*1*) of section 4.

I admit that certain safeguards are provided, *e.g.*, arresting officers are not to be below the rank of sub-inspectors or sergeants and they are to be empowered by name by the Commissioner of Police. In practice, however, the informers will be, in the majority of cases, constables and jamadars on their rounds, and there is grave risk to the women of the town and their helpers, viz., touts, *gharry-wallas* and taxi drivers, of being blackmailed and their falling a constant prey to the *zulum* of the subordinate police. Likewise young maid-servants and poor but respectable widows going outdoors will be exposed to the risk of being illegally arrested at the instigation of malicious persons and thus branded for life.

In any case I cannot approve of the loss of liberty of even unfortunate women, driven to immoral occupation by sheer economic pressure, for a somewhat trivial offence such as solicitation. After all, prostitution is not illegal in this country, and any violent interference with their calling, such as arrest without warrant, will be a serious blow to the liberty of a section of the public plying their legal profession known as " the necessary evil."

I propose, in case the above views are not acceptable to the members of the Council, the following additional safeguards, viz., arrest of offenders without warrant against whom a reasonable complaint has been made or a credible information has been received—information founded on definite fact and not on mere surmise.

I do not anticipate that the number of offenders sent up for trial under the section under comment will be very large, and therefore such an extraordinary measure as the arrest of ignorant women of the town, condemned to lives of shame owing to circumstances (social and economic) over which they have little or no control and in many cases enticed to town by professional procurers, should receive serious consideration of the legislature.

Note of Dissent by Mr. F. E. E. Villiers, M.L.C.

1. All legislation having as its object the suppression of immoral traffic proceeds upon one of the two following principles:—

(a) That commercialized immorality is an evil which can and must be stamped out at all costs.

(b) That, while recognizing it as an evil, great doubts exist as to whether it can be stamped out and legislation is therefore confined to discouraging the vice so far as possible and to safeguarding the public against the most patent results of immorality such, for example, as venereal disease.

2. The Bill under consideration attempts the second alternative by an endeavour to effect control in three main directions: firstly, by striking at the pimp and procurer and thereby limiting the supply; secondly, by providing for the removal from brothels of girls under 16 years of age and lastly by protecting youths from temptation by punishing solicitation.

3. With regard to the first two, I am in entire sympathy and would indeed be prepared to go even further than the present proposals. I am, however, unable to agree with the majority report so far as it deals with the third method and my main reasons for disagreement are as follows:—

(a) that reasonable protection is given against solicitation under the existing law;

(b) that the change suggested by clause 4 of the Bill tends to produce most vicious results by the encouragement of blackmail; and

(c) that apart from any question of blackmail the proposals contained in the clause constitute a definite menace to the liberty of the subject.

4. The main contentions brought forward in support of the argument that solicitation is an evil which needs more drastic treatment are, first, that it is a public nuisance and, second, that it leads to immorality and that its suppression will lead to a diminution of vice.

5. All that need be said in regard to the first contention is that if it is a public nuisance then the existing law provides means for dealing with it as such.

Regarding the second contention, as to solicitation leading to immorality, it must be remembered that so far as Europeans in this country are concerned, they are mostly men with characters already formed; and this being so, except in rare cases, the ordinary European is seldom incited to immorality merely through chance solicitation; either he is moral or he is not.

I am told that this largely holds good in the case of Anglo-Indian youths; there are cases where young men have been led astray by this means, but I believe this to be almost as much the exception in the case of Anglo-Indian youth as I know it to be in that of the European.

With regard to the Indian youth, I confess I am on less certain ground; for while some Indians tell me that the pest of solicitation in certain quarters of the city is such as to be the cause of a considerable amount of immorality, others assure me that in this respect Indian youths do not greatly differ from their European and Anglo-Indian brothers and that as a community they are not led astray in any considerable numbers by this means.

6. As regards obtaining a conviction for solicitation, I fail to see how the new clause will improve matters; either the Magistrate will demand the corroborative evidence of the outraged person or he will accept the uncorroborated evidence of the specially empowered sub-inspector or sergeant; in the former eventuality we shall be no better off than under the existing law, since it is hardly likely that the person solicited, who has not taken voluntary action in the first instance, will come forward to give evidence.

In the case, however, of the Magistrate prepared to accept the uncorroborated evidence of the police witness, we are faced with the following conditions: that where the law has failed in the past to get convictions at the direct instance of the person solicited, it proposes getting one on the mere opinion (and it can seldom be anything more substantial than an opinion) of the sub-inspector or sergeant.

7. My objections on the other hand to this clause are far more than negative in that I believe that it will do definite harm; the chances of blackmail in this connection are more than hypothetical; and in making this statement I neither impute nor imply any charge of dishonesty or corruption against the Calcutta Police; I merely view the matter from the standpoint that it is not reasonable or safe to act on the assumption that the Calcutta Police surpass in integrity the police of other countries or towns; and cases of blackmail have undoubtedly occurred elsewhere.

In my opinion a still more serious danger is likely to arise from perfectly honest mistakes on the part of the police; and the subsequent proving of her innocence will do little to mitigate the humiliation or lessen the irreparable damage done to the good name of an innocent woman, whether European or Indian, who has thus been unjustly arrested.

8. Finally, I look upon clause 4 as a definite menace to the liberty of the subject—and particularly to that section of the public whose interests it is our special duty to safeguard—namely, the Poor; whose only places of recreation and of perfectly innocent meetings with their friends are those "in or within sight of a street or public place".

9. I have therefore signed the Report of the Select Committee subject to this minute of dissent and shall ask leave to move an amendment that clause 4 of the Bill be omitted and that the law as it stands to-day be maintained whereby anyone soliciting for the purposes of immorality may be arrested only when a complaint has been lodged by the person solicited.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 1931L., dated Calcutta, the 30th July, 1923.—With reference to the footnotes to the Report of the Select Committee on the Calcutta Municipal (No. II) Bill, 1923, published in the *Calcutta Gazette*, dated the 25th July, 1923, and in continuation of this office notification No. 1848L., dated the 23rd July, 1923, it is notified that Babu Surendra Nath Mallik, M.L.C., has appended the following Note of Dissent to the Report :—

Note of dissent by Babu Surendra Nath Mallik, M.L.C.

I beg to dissent from the Select Committee's report in the following particulars :—

In clause 7 of the Bill as amended by the Select Committee, the proposal is to enable the Corporation to grant concessions to the newly added areas for the year 1925-26, 1926-27, 1927-28, or 1928-29, *i.e.* for 4 years by assessing at a lower percentage. This concession is proposed to be given over and above that proposed to be given in the first year (1924-25) by not increasing the total existing liability of the rate-payers of those areas. This means a concession for five years.

Looking however to section 90 of the Calcutta Municipal Act, 1923, we find that the concession that has been made to the Calcutta Corporation by the Legislature is that the statutory liability of spending one lakh of rupees on execution of works of original improvement in each of the three added municipalities will not commence till the beginning of the third year after the commencement of that Act. This (drafted now as it is) means a concession for two years only and not even three years as was contemplated and agreed upon. I therefore think that the concession demanded by some of the members of the Select Committee to these newly added areas by way of their being assessed at a lower percentage ought not to extend beyond two years also and in that view I am of opinion that the figures "1927-28 or 1928-29" should be deleted from clause 7 of the Bill as amended by the Select Committee. This again will give the concession for three years, viz., 1924-25, 1925-26 and 1926-27. Furthermore the longer the period for which a concession is given, the greater will be the delay in executing improvements in the added areas. It is but natural that the areas to be improved cannot both claim improvement and concession. Thus the achievement of the object in adding the areas to Calcutta will be delayed. In this view of the matter, the added areas cannot really gain by the concession but would simply be prolonging their unimproved condition.

I would also suggest that the words "or in any specified locality thereof" be inserted after the word "areas" and before the word "referred" in clause 7 of the Bill. Under the clause of the Bill, as it stands at present, the Corporation of Calcutta may give a concession to the whole of an added area (e.g., the whole of the Cossipore-Chitpur area), but has no power to give a concession to a part thereof. It is quite possible that the Corporation may feel inclined to grant the concession to such parts of the area as are inhabited by the poorer section of the people, but not to the whole of the area. The legal difficulty in the way of the Corporation to carry out its intention may lead to a refusal to grant any concession. The result will be that nobody will benefit. The addition of the words, however, does not preclude the Corporation from granting a concession to the whole of the area if it be disposed to do so.

I may also say that if this idea is accepted by the Council, then I on behalf of the Corporation and for myself will be fully prepared to withdraw our objection to the year 1927-28 or 1928-29 in clause 7 as stated above so that a larger period of concessions might be granted to the really poor and deserving people of those three municipalities.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 15, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2060L., dated Calcutta, the 9th August, 1923.—With reference to the footnotes to the Report of the Select Committee on the Bengal Tenancy (Utbandi Amendment) Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923 and in continuation of this office notification No. 1845L., dated the 23rd July, 1923, it is notified that Mr. Syed Erfan Ali, M.L.C., has appended the following Note of Dissent to the Report :—

THE BENGAL TENANCY (UTBANDI AMENDMENT) BILL, 1923.

Note of dissent by Mr. Syed Erfan Ali, M.L.C.

I sign this report subject to this note of dissent. I cannot agree to the payment of any premium by the tenants of *utbandi* lands, the provision for which is made in section 180A, sub-sections (7) and (9). The tenants of *utbandi* lands are invariably on the lands for generations whether the lands be under regular cultivation or occasionally lying fallow. There is no doubt that the tenants of *utbandi* lands would have got the occupancy right but for section 180 of the Bengal Tenancy Act. Under cover of this section, the zamindars have all along been taking special advantage over the poor tenants and the tenants were also under great disabilities and sufferance for generations. When this was detected and it was thought reasonable to change the status of the poor tenants and put them into equal rights and privileges with their brothers in other districts of the province, it cannot for a moment be taken as an equitable suggestion to impose any premium on the tenants for the simple reason of the abeyance of their asserting their just rights ever so long. I once more protest against imposing any premium at all on the tenants at such a juncture. It is a long delayed right and privilege, which they are going to get after a great many years' subjection. I may now quote an extract from a letter addressed by the Secretary to the Government of Bengal to the Secretary to the Government of India, Legislative Department, dated the 27th September 1883 :—

> "Finally, in regard to *utbandi* lands, the Lieutenant-Governor does not see that any exception to the general rule is needed. As far as he is aware, the *utbandi* tenure is only special as regards the system on which rent is paid, and does not affect the legal attributes of the land. It is not so much that one raiyat cultivates one *utbandi* holding one year, and a different raiyat another year, as that rent is paid only on the extent of the land actually cultivated for the year, and by measurement at harvest time according to the actual outturn of the crop. The Lieutenant-Governor understands that prescriptive rights of occupancy under section VIII of 1869 are now actually acquired in these *utbandi* lands, and he would not by any provision impede the growth of such rights."

This and another extract from a very recent Report of the Administration of Bengal (1921-22) will substantiate my statement very strongly. It runs under the heading of *Utbandi Tenures* thus :—......" In Nadia one-third of the district is covered by *utbandi* tenancies, some of which have none of the characteristics of *utbandi*. In some cases rent is paid for all the lands every year and the tenant has acquired an occupancy right, though neither he nor the landlord was aware of it. Generally speaking, the same tenant goes back to the same lands year after year and generation after generation, and the fields have definite boundaries."

I now leave it to the discretion of the Members of the Bengal Legislative Council.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2090L., dated Calcutta, the 13th August, 1923.—With reference to the foot-note to the Report of the Select Committee on the Bengal Municipal (No. II) Bill, 1923, published in the *Calcutta Gazette* of the 25th July, 1923 and in continuation of this office notification No. 1848L., dated the 23rd July, 1923, it is notified that Mr. D. J. Cohen, M.L.C., has appended the following Note of Dissent to the Report :—

THE CALCUTTA MUNICIPAL (No. II) BILL, 1923.

Note of Dissent by Mr. D. J. Cohen, M.L.C.

I take exception to the enactment of the rule that the qualifying year should end on the 30th September of the official year of election. The fact has been overlooked that the large body of men who have been enfranchised under clauses (*b*) and (*c*) of section 20, *i. e.*, tenants, occupiers and owners of huts, will practically be to a certain extent disfranchising because of the very short time which will be available for the preparation of the draft electoral roll, it may not be possible to include all these people in the roll. It has to be borne in mind that the requisite qualification of these men is that their names must be entered in the special register provided for in clauses (*b*) and (*c*). The entry of these names in the special register is dependent on the order of the Executive Officer which is in turn dependent in the first place on the applications of these persons and secondly on proofs being adduced before the Executive Officer of payment of rates and rents. These applications cannot be made till after the 1st of October because their qualifications depend on having paid rates or rents up to the 30th September. The Executive Officer is sure to be flooded with applications in the month of October, and it will hardly be possible to dispose of them satisfactorily before at least 4 to 6 weeks with the limited time that will be at the disposal of the Executive, the consequence will be that the work will be hurriedly pushed through unsatisfactorily and many names that should have found a place in the roll will be omitted. This number will certainly be larger than the small number for whose benefit the time is being extended, and as a result by taking the 30th September as the qualifying year the disadvantages will be very much greater than the advantages. It is an exaggerated idea that a large number of people will be omitted if the qualifying year ends on the 31st March. It is well known that a very small percentage of houses change hands during a period of six months, and in so far as tenants are concerned, clauses (*b*) and (*c*) provides—if my reading of them be correct—that a person shifting his residence within a particular ward can still claim to have his name inserted in the roll, provided he proves that he resided in that particular ward for six months of that year.

Another argument for my contention that the qualifying year should be taken as the year ending 31st March, is that it will be in keeping with the rule for the Bengal Council Election and the work can be got through up to a certain extent, together. This will mean a saving of a large sum of money. It is true that the franchise has been extended in the New Calcutta Municipal Act, but we all know, that the qualifications of electors for the Council elections have been taken from the present Calcutta Municipal Act and now that we have extended the franchise in the New Municipal Act, it will not be very long before the Council will adopt the new qualifications. The money that will then be saved will be even greater than will be the case now if the qualifying year be taken as the year ending 31st March.

C. TINDALL,

Secretary to the Government of Bengal and

Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, AUGUST 22, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2148L., dated Calcutta, the 18th August, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 16th August, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

THE BENGAL TEA-GARDENS PUBLIC HEALTH BILL, 1923.

A Bill to provide for the control and sanitation of tea-garden areas in Bengal.

WHEREAS it is necessary to provide for the control and sanitation of tea-garden areas in Bengal, and to make better provision for preventing the outbreak and spread in such areas of epidemic disease;

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act;

5 & 6, Geo. V, C. 61; 6 & 7, Geo. V, C. 37; 9 & 10, Geo. V, C. 101.

It is hereby enacted as follows:—

Preliminary.

Short title, commencement and extent.

1. (*1*) This Act may be called the Bengal Tea-gardens Public Health Act, 1923.

(*2*) It shall come into force on such date as the Local Government may, by notification, direct.

(*3*) It extends in the first instance only to the district of Jalpaiguri:

Provided that the Local Government may, by notification, extend this Act to any other district or local area in Bengal.

Repeal of enactment.

2. The Jalpaiguri Labour Act, 1912, is hereby repealed. E. B. and A. Act II of 1912.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Board" means a Tea-gardens Board of Health established under this Act;

(*b*) "landholder" means a proprietor holding land under, or a tenant holding land directly under or paying rent direct to, the Government within a tea-garden area, and includes the Government where there is no proprietor or tenant under the Government;

(*c*) "notification" means a notification published in the *Calcutta Gazette*; and

(*d*) "prescribed" means prescribed by the Local Government by rules under this Act.

Declaration of a Tea-garden Area.

Declaration of area as a tea-garden area.

4. (*1*) Whenever it appears to the Local Government that it is necessary to provide for the control and sanitation of any area within which persons employed in a tea-garden reside, and for the prevention in such area of the outbreak and spread of epidemic disease, the Local Government may, by notification, published in the *Calcutta Gazette* and in such other manner, if any, as they may determine, intimate their intention to declare such area to be a tea-garden area for the purposes of this Act. [Cf. B. & O. Act IV of 1920, s. 4.]

(2) The Local Government shall consider any objection or suggestion in regard to the intended declaration which may be submitted to them in writing by any person likely to be affected by such declaration within a period to be specified in this behalf in the notification issued under sub-section (1), and may then, by notification, declare the said area, or any portion thereof, to be, for the purposes of this Act, a tea-garden area.

(3) Every notification issued under this section shall define the limits of the area to which it relates.

(4) The Local Government may, by a like notification, include or exclude any area in or from a tea-garden area.

Creation and incorporation of Tea-gardens Board of Health.

5. (1) The Local Government may, by notification, establish a Board, to be called a Tea-gardens Board of Health, for carrying out the purposes of this Act in any tea-garden area specified in such notification. [*Cf.* B. & O. Act IV of 1920, s. 5.]

(2) The said Board shall, by the name of the Tea-gardens Board of Health of (*the designation of the tea-garden area*), be a body corporate and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, with power to acquire or hold property, both moveable and immoveable, and, subject to such restrictions as may be prescribed, to transfer any such property held by it and to contract and do all other things necessary for the purposes of this Act.

Constitution of the Board.

6. (1) The Board shall consist of fifteen members, of whom— [*Cf.* B. & O. Act IV of 1920, s. 6.]

(*a*) ten shall be elected by the managers of tea-gardens within the tea-garden area, provided that at least one of the members so elected shall be a registered medical practitioner;

(*b*) one shall be elected by the Indian Tea Association;

(*c*) one shall be elected by the District Board within whose jurisdiction the tea-garden area lies; and

(*d*) three shall be appointed by the Local Government.

(2) The election of members under this section shall be made in such manner and within such period as may be prescribed.

(3) If any of the bodies mentioned in sub-section (1) does not, within the prescribed period, elect a person to be a member of the Board, the Local Government shall nominate a member in his place; and the person so nominated shall be deemed to be a member as if he had been duly elected by such body.

(4) No act done by the Board, or by any of its officers, shall be deemed to be invalid merely by reason of any vacancy among any class of members or by reason of the total number of members being less than that fixed under sub-section (1).

Chairman and Vice-Chairman.

7. The Chairman and the Vice-Chairman of the Board shall be elected by and from among the members of the Board in such manner as may be prescribed, provided that the election of the Chairman shall be subject to the approval of the Local Government. [Cf. B. & O. Act IV of 1920, s. 7.]

Powers of Chairman

8. The Chairman may, for the transaction of business connected with this Act or for the purpose of making any order authorized thereby, exercise such of the powers vested by this Act in the Board as may, subject to such restrictions (if any) as may be prescribed, be delegated to him by the Board. [Cf. B. & O. Act IV of 1920, s. 8.]

Powers of Vice-Chairman.

9. (*1*) The Chairman may, subject to such restrictions as may be prescribed, by written order, delegate to the Vice-Chairman or any officer of the Board all or any of the powers or duties assigned to the Chairman by this Act or by the rules made thereunder: [Cf. B. & O. Act IV of 1920, s. 9.]

Provided that nothing done by the Vice-Chairman, which might have been done under the authority of a written order from the Chairman, shall be invalid for want of, or for any defect in, such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained.

(*2*) In the absence of the Chairman from the tea-garden area the Vice-Chairman shall exercise and perform all the powers and duties of the Chairman.

District Committees

10. (*1*) The Board at a meeting may divide the tea-garden area into districts and may appoint for any district a District Committee consisting of not less than three persons, whether such persons be or be not members of the Board. [Cf. Ben. Act III of 1884, ss. 50 and 52.]

(*2*) Each District Committee may elect its own Chairman and Vice-Chairman (if necessary) from among its own members.

Delegation of powers to District Committees.

11. The Board at a meeting may delegate to a District Committee any of its powers under this Act, and such District Committee may exercise the powers so delegated within the limits of the district, subject to the control of the Board. [Cf. Ben. Act III of 1884, s. 53.]

The Tea-garden Area Fund.

Establishment of the Tea-garden Area Fund

12. For every tea-garden area there shall be established a fund to be called "the Tea-garden Area Fund" of (*the designation of the tea-garden area*). This fund shall be vested in the Board, and there shall be placed to the credit thereof in a district or subdivisional treasury— [Cf. B. & O. Act IV of 1920, s. 10.]

(*a*) all sums charged by the Board under the provisions of this Act to and recovered from landholders and owners of tea-gardens;

(*b*) all sums allotted to the Board from the provincial revenues by the Local Government, and all sums borrowed by the Board under the Local Authorities Loans Act, 1914, for the purpose of carrying out the provisions of this Act; IX of 1914.

(c) all grants received from any local authority, association or private person;

(d) all sums realized as costs, fees, fines, penalties or otherwise under this Act or under the rules or by-laws made thereunder.

Application of the Fund.

13. The Tea-garden Area Fund shall be applicable to the following objects and in the following order :— [Cf. B. & O. Act IV of 1920, s. 11.]

(a) to the payment of any sums which the Board may be liable to pay as interest upon loans, and to the repayment of the principal of such loans, in accordance with the terms of such loans;

(b) to the payment of the salaries of the Medical Officers of Health and Sanitary Inspectors and other establishment employed by the Board;

(c) to the payment of contributions to a provident or annuity fund for the Medical Officers of Health and other establishment employed by the Board;

(d) to the payment of travelling allowances at such rates as may be prescribed to members of the Board and to its officers and servants;

(e) to the payment of the cost of audit; and

(f) to the payment of expenses incurred by the Board for the purposes of this Act and of the rules and by-laws made thereunder.

Imposition of Tea-garden Cess.

14. (1) The Board shall impose yearly a tax to be called the "tea-garden cess," which shall be levied at rates not exceeding such maximum rates as may be prescribed, on— [Cf. B. & O. Act IV of 1920, s. 23]

(a) all owners of tea-gardens in which are employed persons residing in the tea-garden area, and

(b) all landholders holding land within the said area.

(2) The amount of the tea-garden cess shall be such sum as the Board considers likely to be sufficient, together with the other amounts estimated as likely to be received to the credit of the Tea-garden Area Fund, to meet the expenditure to be incurred by the Board under this Act.

(3) The assessment of the cess shall be determined on such basis as may be prescribed.

(4) No person shall be liable to be assessed both under clause (a) and clause (b) of sub-section (1) in respect of the same piece of land, and not more than one person shall be liable to be assessed in respect of any piece of land.

(5) In case of any dispute as to the amount of the assessment or as to the person by whom the tea-garden cess is payable in respect of any piece of land, the matter shall be referred to the Commissioner, whose decision shall be final.

(6) The cess so levied on every such owner or landholder shall be recoverable as a public demand.

Grant by the District Board to the Tea-garden Area Fund.

15. (1) Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885, the District Board within the jurisdiction of which any tea-garden area lies shall make an annual grant to the Tea-garden Area Fund. Ben. Act III of 1885.

(2) For the purpose of determining what grant shall be made in any year under sub-section (1), the Board shall, on or before the first day of November of each year, submit a statement to the District Board, setting out its estimated receipts and expenditure and programme of works during the ensuing year, and stating the amount of the grant which it requires in order to carry out the purposes of this Act during that year.

(3) If the District Board agrees to make the required grant, it shall record a resolution to this effect and shall proceed to make provision in its budget for the said grant.

(4) If the District Board does not agree to make the required grant, it shall, on or before the first day of January, submit a representation to the Local Government setting out the grounds on which it is not prepared to make the grant, and stating the amount which in its opinion it may reasonably be required to pay to the Tea-garden Area Fund.

(5) The Local Government shall then fix the amount to be paid by the District Board in the ensuing year, provided that this amount shall in no case exceed the sum which, in the opinion of the Collector, whose order shall be final, represents the net receipts of the public works cess levied from the tea-garden area in the preceding year.

Explanation.—The term "net receipts of the public works cess" means the gross receipts less the collection charges.

(6) When the Local Government have fixed the amount of the grant to be paid under sub-section (1), this amount shall be payable by the District Board to the Tea-garden Area Fund in such manner and at such time as may be prescribed as though it were an amount payable out of the District Fund under section 53 of the Bengal Local Self-Government Act of 1885. Ben. Act III of 1885.

Establishment of the Board.

Establishment of the Board.

16. The Board may, save as provided in section 18 and subject to such restrictions as may be prescribed, determine and appoint the establishment to be employed by it, and fix the salaries and allowances to be paid to the members of such establishment. [Cf. B. & O. Act IV of 1920, s. 12.]

Powers of Board to make rules for pensions, etc.

17. (1) The Board may, with the sanction of the Commissioner and subject to the control of the Local Government, make rules— [Cf. B. & O. Act IV of 1920, s. 13.]

(a) regulating the grant of pensions and gratuities out of the Tea-garden Area Fund to officers and servants of the Board, and

(b) for establishing and maintaining a provident or annuity fund, and for compelling its officers and servants to contribute thereto, and for supplementing such contributions out of the Tea-garden Area Fund.

(2) The Board may, in accordance with such rules,—

(a) grant pensions or gratuities, or grant allowances or annuities out of such provident or annuity fund to any of its officers or servants as it may see fit;

(b) if it thinks fit, grant a pension or gratuity to any member of the family of any of its officers or servants who has died from any disease contracted, or injury suffered, in the discharge of a duty which was attended with extraordinary bodily risk.

Medical and Sanitary Officers.

Appointment of Medical Officers of Health and Sanitary Inspectors.

18. (1) The Board may appoint for the tea-garden area, or any part thereof, as many Medical Officers of Health as it may consider necessary, and shall fix the salary to be paid to each such officer: [Cf. B. & O. Act IV of 1920, s. 14.]

Provided that every such appointment, the salary to be paid in each case, and the suspension or dismissal of any such officer, shall be subject to the approval of the Local Government.

(2) The Board may appoint as many Sanitary Inspectors as it may consider necessary.

(3) Every Medical Officer of Health and Sanitary Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. Act XLV of 1860.

Powers and duties of such officers

19. (1) Every Medical Officer of Health shall be subordinate to the Board and shall, within the area for which he has been appointed, exercise the powers conferred on him and perform the duties imposed upon him by this Act and the rules thereunder, and, subject to the control of the Board, such other powers and duties consistent with the objects of this Act as the Local Government may, by general or special order, direct, or as may be delegated to him by the Board. [Cf. B. & O. Act IV of 1920, s. 15.]

(2) Every Sanitary Inspector shall be subordinate to the Medical Officer of Health, and shall exercise such powers and perform such duties as may be prescribed, or as may be delegated to him by the Medical Officer of Health with the consent of the Board.

(3) Every Medical Officer of Health or Sanitary Inspector may, within the tea-garden area or part thereof for which he has been appointed,—

(a) make such inquiries as he may think fit, in order to ascertain whether the provisions of this Act and of the rules and orders made thereunder are observed;

(b) enter, with such assistants (if any) as he may think fit, and inspect such tea-garden area or part thereof at all reasonable times by day or by night;

(c) make inquiries respecting the sanitary condition of such tea-garden area or part thereof and the sufficiency of the rules for the time being in force therein; and

(d) do all things necessary for the due discharge of the duties imposed upon him by or under this Act.

Duties of Landholders and of Owners and Managers of Tea-gardens.

Provision of house accommodation, etc., for labourers.

20. Every owner of a tea-garden within a tea-garden area shall provide for the labourers employed in the tea-garden such house-accommodation, water-supply and sanitary arrangements and medical assistance as the Board may, by by-law, require.

[*Cf.* B. & O. Act IV of 1920, s. 16.]

Facilities to be afforded to Medical Officers of Health and Sanitary Inspectors.

21. Every owner and manager of a tea-garden in which are employed persons residing in any tea-garden area, and every person holding or occupying land within such tea-garden area, shall furnish the Medical Officer of Health or Sanitary Inspector, on requisition, with all reasonable facilities for entering upon any premises or land and making any inspection, examination or inquiry under this Act in relation to the sanitary condition of such tea-garden area.

[*Cf.* B. & O. Act IV of 1920, s. 17.]

Powers and Procedure of the Board.

Power of Board to execute and enforce measures for sanitation, etc.

22. Subject to such restrictions as may be prescribed, the Board may take or enforce such measures and may execute and maintain, or enforce the execution and maintenance of, such works as it considers to be necessary, on the recommendation of a Medical Officer of Health or otherwise,—

[*Cf.* B. & O. Act IV of 1920, s. 18.]

(i) for the provision of supplies of wholesome water;

(ii) for sanitation, drainage or conservancy;

(iii) in order to provide for and regulate the housing of residents, whether permanent or temporary;

(iv) in order to prevent the outbreak and spread of epidemic disease;

(v) in order to provide for the proper treatment of the sick, the establishment and maintenance of hospitals and dispensaries and the entertainment of a sufficient medical staff;

(vi) for the exercise of sanitary control over markets and *hâts*; and

(vii) generally for the carrying out of the purposes of this Act, in the area for the control of which the Board has been constituted, or in any part thereof.

Power to require owners of tea-gardens and others to execute such measures.

23. (1) If the Board is satisfied that it is necessary that measures should be taken for any of the purposes specified in section 22 in any part of the tea-garden area, and that the necessity for such measures is distinctly referable to any act or omission in respect of his property on the part of the owner of any tea-garden in which are employed persons resident in the tea-garden area, the Board may, by a notice specifying the measures to be taken, require such owner, at his own cost,— [Cf. B. & O. Act IV of 1920, s. 19.]

(i) to execute, within a period to be fixed in the notice, all works which the Board may consider necessary for carrying such measures into effect, and to maintain in good repair all works so executed ;

(ii) to carry on such continuous or periodical operations as the Board may direct, for carrying such measures into effect.

(2) If the Board is satisfied that in order to prevent or abate a nuisance affecting the public health it is necessary that any landholder or owner of house-property in any part of the tea-garden area should take certain action in regard to any property belonging to him or in his possession or under his management, the Board may by notice require such person to take such action at his own cost.

(3) If in any of the cases referred to in sub-sections (1) and (2) the Board is satisfied that immediate remedy is necessary, the Board may, for reasons to be recorded, by a notice specifying the measures to be taken and the estimated cost thereof (if any), declare its intention of itself executing and maintaining any such work or carrying on any such operations or taking such action at the cost of such owner, landholder or owner of house-property.

Objection against requisition.

24. Any person who is required by a notice under sub-section (1) or sub-section (2) of section 23 to do anything may prefer an objection in writing to the Board within five days from the date of service of the notice, and the Board shall, after considering the objection, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred ; or substituting for such requisition a declaration under sub-section (3) of section 23 if the Board, for reasons to be recorded, is satisfied that immediate remedy is necessary. [Cf. B. & O. Act IV of 1920, s. 20.]

Power to execute work on default.

25. If any work required by a notice under sub-section (1) of section 23 be not executed, or if the action required to be taken under sub-section (2) of section 23 be not taken, to the satisfaction of the Board, within the period fixed by the notice or within such further period (if any) as may be allowed by the Board, or if any work executed in pursuance of a notice under sub-section (1) of section 23 be not maintained in repair to the satisfaction of the Board, or if any operations required by any such notice be not carried on to the satisfaction of the Board, or, in [Cf. B. & O. Act IV of 1920, s. 21.]

any case in which a declaration has been made under sub-section (*3*) of section 23, the Board may cause such work or operations to be carried out or such action to be taken or repairs effected, and the cost therein incurred shall be recoverable from the defaulter as a public demand.

Appeal from orders under section 21(3) or 22.

26. Any person aggrieved by an order passed under section 24 or by a declaration under sub-section (*3*) of section 23, may appeal to the Commissioner within thirty days from the date of such order or declaration: [*Cf.* B. & O. Act IV of 1920, s. 22.]

Provided that the filing of such an appeal shall not operate, unless the Commissioner so directs, to stay any action by the Board during the pendency of the appeal.

Power to prohibit use of markets without license.

27. The Board at a meeting may, by order, to be published in such manner as it may think fit, direct that, except with its permission, no land in a tea-garden area shall be used as a market or *hât* for the sale of meat, fish, butter, ghee, fruits, vegetables or other articles of food, and may at a meeting, after issuing such an order, grant a license, subject to such conditions as may be prescribed, for the use of any land for the above purpose: [*Cf.* Ben. Act III of 1884, ss. 337, 338.]

Provided that, where the Board has refused to issue a license in the case of a market or *hât* existing at the commencement of this Act, any person aggrieved by such refusal may, within thirty days from the date of such refusal, appeal to the Commissioner, whose order thereon shall be final.

Grounds for refusal of license.

28. The Board shall not refuse a license for establishing a market or *hât* or for maintaining a market or *hât* established at the date of the publication of the order under section 27, except on the ground that the places where the market is established or is to be established do not conform to any conditions which may be prescribed by by-law under section 34.

Cancellation, suspension and renewal.

29. The Board may cancel, suspend or refuse to renew any license granted under section 27, on the failure of the licensee to comply with any of the conditions of the license or with any other provision made by or under this Act.

Penalty for using unlicensed market.

30. Whoever, being the owner or occupier of any land, wilfully or negligently permits the same to be used as a market or *hât* for the sale of meat, fish, butter, ghee, fruits, vegetables or other articles of food without a license granted under section 27, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees for each day during which the offence is continued after conviction of such offence. [*Cf.* Ben. Act III of 1884, s. 344.]

Power to close unlicensed place.

31. The Board may order any land in respect of which a conviction has been obtained under section 30 to be closed as a market-place, and thereupon may take action to prevent such land being so used; [*Cf.* Ben. Act III of 1884, s. 346.]

and every person who sells or exposes for sale meat, fish, butter, ghee, fruits, vegetables or other articles of food, on any land which has been so closed, shall be liable, for every such offence, to a fine not exceeding ten rupees.

Exemption of tea-garden areas from certain enactments regarding sanitation, etc.

32. (*1*) Nothing contained in any law or enactment for the time being in force to provide for the sanitation of areas within the jurisdiction of a District or Local Board or a Union Board and to make better provision for preventing the outbreak and spread in such areas of epidemic disease, shall apply to any tea-garden area : [*Cf.* IV of 1896, s. 3.]

Provided that notwithstanding anything contained in sub-section (*1*), the Local Government may, by notification, and after previous publication, extend any provision contained in any law or enactment referred to in that sub-section to any tea-garden area, but not so as in any way to detract from or diminish the powers of the Board or to alter the constitution thereof.

Miscellaneous.

Power of Local Government to make rules.

33. (*1*) The Local Government may, after previous publication, make rules to carry out the purposes of this Act. [*Cf.* B. & O. Act IV of 1920, s. 24.]

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) regulate the powers of the Board to transfer property, and to enter into contracts ;

(*b*) determine the manner and the time of election of members of the Board and of the Chairman and the Vice-Chairman, and prescribe the tenure of office of members of the Board, and generally regulate all elections under this Act ;

(*c*) regulate the powers and procedure of the Board, the delegation to, and exercise by, the Chairman of powers vested in the Board and the delegation by the Chairman of his powers and duties to the Vice-Chairman or any officer of the Board ;

(*d*) regulate the appointment, suspension, dismissal, leave, salaries and allowances of the establishment employed by the Board, and the travelling allowances of members of the Board ;

(*e*) regulate the powers of the Board under section 22, and the powers and duties of Medical Officers of Health and Sanitary Inspectors and provide for appeals from their orders ;

(*f*) regulate the manner in which, and limit the rates at which, the tea-garden cess may be imposed by the Board, and determined the basis of the assessment thereof, and provide for the time within which and the manner in which an appeal against such assessment may be presented ;

(*g*) regulate all expenditure to be incurred by the Board and the methods under which sums due to it may be calculated and recovered ;

(*h*) prescribe the manner and time of payment of the grant to be made by the District Board under section 15 ;

(*i*) regulate the custody of the Tea-garden Area Fund, the keeping and audit of accounts, and the manner in which payments may be made from the fund ; and

(*j*) regulate the service of notices and requisitions.

(*3*) All rules made under this section shall be published in the *Calcutta Gazette.*

Power of Board to make by-laws.

34. (*1*) The Board may, after previous publication, make by-laws— [*Cf.* B. & O Act IV of 1920, s. 25.]

(*i*) prescribing the duties of owners and managers of tea-gardens and of persons acting under them ;

(*ii*) prescribing the matters in respect of which notices, returns and reports shall be furnished by owners and managers of tea-gardens, the form of such notices, returns and reports, the persons and authorities to whom they are to be furnished and the particulars to be contained in them ;

(*iii*) providing for the water-supply, sanitation and conservancy of the tea-garden area ;

(*iv*) providing for the taking of measures to prevent the outbreak or spread of epidemic disease ;

(*v*) regulating the construction and sanitation of houses for the accommodation of persons employed in the tea-gardens ;

(*vi*) providing for the prevention or abatement of nuisances affecting the public health committed by any persons within the limits of the tea-garden area ;

(*vii*) prescribing the medical assistance to be provided by the owners and managers of tea-gardens for the labourers employed under them ;

(*viii*) prescribing the fees to be paid for the grant of licenses for markets or *hâts*, and the conditions subject to which such licenses shall be granted ; and

(*ix*) generally for promoting the safety, health and welfare of persons resident within the tea-garden area.

(*2*) By-laws made under this section shall not take effect until they have been confirmed by the Local Government and published in the *Calcutta Gazette.*

Penalties for offences.

35. (*1*) Whoever obstructs any Medical Officer of Health or Sanitary Inspector or any contractor duly employed by the Board in this behalf in the discharge of his duties under this Act or under the rules or by-laws made thereunder, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any tea-garden area, or withholds any information necessary for the purposes of such inquiry, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. [*Cf.* B. & O. Act IV of 1920, s. 26.]

(2) Whoever makes, gives or delivers to the Board or to any authority to which such notice or return is to be given or furnished, any notice or return required by or under this Act which contains a statement, entry or detail which is not, to the best of his knowledge or belief, true, shall be punishable with fine which may extend to five hundred rupees.

(3) Whoever—

(a) fails to comply with any requisition or order made under any provision of this Act or of any rule, by-law or order made thereunder, or

(b) contravenes any provision of this Act or of any rule, by-law or order made thereunder, for the breach of which no penalty is otherwise provided,

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing breach under clause (a) of this sub-section, with a further fine which may extend to fifty rupees for every day during which the breach is proved to have continued after the date of the receipt by him of the requisition or order referred to in that clause.

Prosecution of landholder, owner, etc.

36. No prosecution shall be instituted against any owner or manager of a tea-garden or any landholder for any offence against this Act or any rule, by-law or order made thereunder, except at the instance of the Board. [Cf. B. & O. Act IV of 1920, s. 27.]

Limitation of prosecutions.

37. No Court shall take cognizance of any offence against this Act or any rule, by-law or order made thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed. [Cf. B. & O. Act IV of 1920, s. 28.]

Cognizance of offences.

38. No Court inferior to that of a Magistrate of the first class or a Subdivisional Magistrate shall try any offence against this Act or any rule, by-law or order made thereunder which— [Cf. B. & O. Act IV of 1920, s. 29.]

(a) is alleged to have been committed by any owner or manager of a tea-garden, or

(b) is punishable with imprisonment.

Powers of Board for obtaining evidence.

39. The Board shall have the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents; and every person required by the Board to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code. [Cf. B. & O. Act IV of 1920, s. 30.] Act XLV of 1860.

Service of notices.

40. Any notice under section 23 may be sent by post. [Cf. B. & O. Act IV of 1920, s. 31.]

Power of Local Government to alter or rescind orders.

41. The Local Government may rescind or modify any order passed under this Act by any authority constituted in accordance therewith. [Cf. B. & O. Act IV of 1920, s. 32.]

STATEMENT OF OBJECTS AND REASONS.

The tea-gardens of the Western Duars in the Jalpaiguri district lie in a narrow strip of submontane country covering a total area of about 475 square miles, of which under 300 square miles is occupied by the tea-gardens while the balance is comprised of villages and Government estates including several khasmahal bazars. About thirteen years ago the Duars Committee was appointed to enquire into the sanitary and economic conditions of the tea-gardens. They were of opinion that action should be taken to improve the collection of vital statistics and the medical and sanitary arrangements in the tea-gardens. The Government of Eastern Bengal and Assam decided that a reliable record should be obtained of births and deaths among the coolie population, and the Jalpaiguri Labour Act of 1912 was accordingly passed, and under its provisions the Civil Surgeon submits an annual report on its working, referring also to such matters as sanitation, water-supply and medical relief. In 1920 it was suggested that an Act was necessary under which the tea-garden proprietors could be required to take proper steps to secure the health of their labour force.

The object of the present Bill is to create a new local authority, viz., a statutory Board of Health similar to the Asansol Mines Board of Health to exercise wide powers for the organization of public health in tea-garden areas and for enforcing the execution of measures which may in the opinion of the Board be necessary.

2. The Bill in the first instance applies only to the district of Jalpaiguri but might under the proviso to clause 1(*3*) be extended to other districts, *e.g.*, to the district of Darjeeling. Under clause 4 the Local Government is given power to define the limits of "a Tea-garden Area" for the purposes of the Bill.

3. The representation of the different interests concerned on the Tea-gardens Board of Health (clauses 5 and 6) has been fixed in consultation with the tea industry. It is intended that the Board shall consist mainly of tea-garden managers who are directly interested in the health of their coolies, while Government would probably use one of its nominations to give representation to the *jotedars* who are liable to assessment under clause 14.

4. The Tea-garden Area Fund (clauses 12 and 13) will be obtained by the levy of a cess at rates and under procedure to be fixed by rule. This cess will be assessed on owners of tea-gardens and on landholders, which word by the definition in clause 3(*b*) will include not only Government in its capacity as zamindar but also the *jotedars* holding land under Government. It will also include shopkeepers in khasmahal bazars and *ijaradars* in the Government *hâts*.

5. The District Board will be relieved to a very large extent of all responsibility for medical and public health measures in a tea-garden area. Generally speaking, the Tea-garden Board of Health is likely also to relieve the District Board of its obligation to provide water-supply in these areas. These are the matters for which it was intended that the public works cess should ordinarily be reserved when it was handed over to District Boards in 1913. It is therefore reasonable that the District Board should be required to make some contribution towards the Tea-Garden Area Fund, the amount to be determined by Government after considering the proposals of the Tea-garden Board of Health and the views of the District Board, provided that the contribution shall in no case exceed the amount realised as public works cess in the tea-garden area. It may be stated that the question of making the Distrct Board a Board of Health for the tea-garden area has been considered, but in view of the special problems involved, it was considered advisable to create an *ad hoc* authority rather than to add to the duties and responsibilities of the District Board.

6. The Board of Health will mainly work through its Medical Officer of Health; this post is one of primary importance to the successful working of the Board and to secure the proper independence of the officer appointed, certain powers regarding his appointment, dismissal, etc., are vested under clause 18 in the Local Government.

7. Clause 20 states the ordinary conveniences or comforts which a tea-garden owner is required to provide for his labour force, and clause 22 *inter alia* vests power in the Board to enforce the obligations imposed under clause 20.

8. Clause 27 which provides for the licensing and thereby the control of private parks or markets is essential to enable the Board to ensure the purity of food-stuffs.

It will be seen that an appeal from an order of the Board refusing to grant a license may be preferred to the Divisional Commissioner.

9. In clause 32 the jurisdiction of district, local and union boards is barred in respect of sanitary measures in tea-garden areas.

10. The Local Government and the Board are given wide powers to make rules and by-laws respectively for carrying out the purposes of the Act. It will be seen that the powers of the Board in this respect are confined mainly to obtaining information on such matters as vital statistics, to providing for water-supply, sanitation and conservancy in the tea-garden area, to preventing the outbreak or spread of epidemic disease, to regulating the type of accommodation for the labour force, and to abating nuisances which may be injurious to the public health in a tea-garden area.

11. Clause 38 is important in providing that offences under the proposed Act shall not be tried by any Court inferior to that of a Magistrate of the first class or a Subdivisional Magistrate.

SURENDRA NATH BANERJEA,
Member-in-Charge.

CALCUTTA :
The 9th July, 1923.

C. TINDALL,
Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2150L., dated Calcutta, the 18th August, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 16th August, 1923, and is hereby published for general information, together with Statement of Objects and Reasons annexed thereto :—

CONTENTS.

THE BENGAL LOCAL SELF-GOVERNMENT (AMENDMENT) BILL, 1923.

A BILL

further to amend the Bengal Local Self-Government Act of 1885.

Preamble.

WHEREAS it is expedient further to amend the Bengal Local Self-Government Act of 1885 in the manner hereinafter appearing; Ben. Act III of 1885

AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 & 6, Geo. V, c. 61; 6 & 7, Geo. V, c. 37; 9 & 10, Geo. V, c. 101.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Local Self-Government (Amendment) Act, 1923.

Amendment of section 5 of Ben. Act III of 1885.

2. In section 5 of the Bengal Local Self-Government Act of 1885, hereinafter referred to as the said Act,—

(*i*) before the definition of "Commissioner" the following shall be inserted, namely:—

"carriage" means any wheeled vehicle with springs or other appliances acting as springs, and includes a motor-car, motor-lorry, motor-omnibus and motor-cycle;

(*ii*) after the definition of "Magistrate of the district" the following shall be inserted, namely:—

"market" means any place where persons periodically assemble for the sale of meat, fish, fruit, vegetables, livestock or any other article of food;

(*iii*) after the definition of "Cess year" the word "and" shall be omitted and the following shall be inserted, namely:—

"prescribed" means prescribed by this Act or by rules made thereunder; and

Transfer of power of appointment of members of District and Local Boards from the Commissioner to the Local Government.

3. (*1*) In sections 7, 10, 15 and 25 of the said Act, and in section 11 of the said Act, as in force both in areas where the Bengal Village Self-Government Act, 1919, is, and is not, in force, for the word "Commissioner" the words "Local Government" shall be substituted.

(*Clauses 4-7.*)

(*2*) For section 29B of the said Act the following shall be substituted, namely :—

"29B. In appointing persons to be members of a District or Local Board the Local Government shall select persons who in their opinion are specially fitted to be members of such Boards and shall have regard to the representation of minorities and of the backward classes."

Appointment of members of District and Local Boards.

Amendment of section 31 of Ben. Act III of 1885.

4. In section 31 of the said Act for the word "three", in the two places where it occurs, the word "seven" shall be substituted.

Amendment of section 32.

5. In clause (*g*) of section 32 of the said Act for the words "leave, leave allowance" the words "allowances, leave" shall be substituted.

Amendment of section 52.

6. In section 52 of the said Act after clause (*5a*) the following shall be inserted, namely :—

"(*5b*) all receipts accruing within the district from the carriage tax, and the *mela* tax, and from license fees levied in respect of markets ;"

Insertion of new sections 52A, 52B, 52C and 52D.

7. After section 52 the following shall be added, namely :—

Investment of surplus money

"52A. (*1*) Surplus moneys at the credit of the District Fund which cannot immediately or at an early date be applied to the purposes to which that Fund is applicable may, from time to time, with the special permission of the Local Government, be deposited at interest or placed in current account in the Imperial Bank of India or in any other Bank or Banks in Bengal which may be approved in this behalf by the Local Government.

(*2*) The loss, if any, arising from any such deposit shall be debited to the District Fund.

Tax on carriages.

52B. (*1*) The District Board may, with the sanction of the Local Government, impose a tax on carriages kept or ordinarily used within the district, at such rates as the District Board may, with the approval of the Local Government, from time to time fix.

(*2*) The tax imposed under sub-section (*1*) shall be assessed and collected by the District Board or by such other local authority as the Local Government may direct and in such manner as may be prescribed, and objections against such assessment shall be made in such manner as may be prescribed, and shall be heard in such manner as may be prescribed by the District Board or such other local authority as the Local Government may direct.

(*3*) The tax on carriages shall not be imposed in respect of ordinary bicycles or tricycles or in respect of any vehicle or class of vehicle which the Local Government may by general or special order exempt therefrom.

(*Clause 7.*)

(*4*) Notwithstanding anything contained in the Bengal Municipal Act, 1884,—

(*i*) where a carriage, not kept within an area in which the carriage tax is levied under this Act, is so used in such area and also in a Municipality, the carriage tax shall not be levied under this Act in respect of such carriage;

(*ii*) where a carriage is kept within an area in which the carriage tax is levied under this Act and is also licensed in a Municipality, the carriage tax shall be leviable under this Act in respect of such carriage and no license fee shall be payable in respect thereof under the Bengal Municipal Act, 1884.

Tax on persons attending *melas*, fairs, etc.

52C. (*1*) With the previous sanction of the Local Government the District Board may impose a tax on persons attending any assemblage such as a *mela*, fair, show, public festival or similar assemblage within the district, which assemblage is specially notified in this behalf by the Local Government as being held periodically or on special occasions, and is held near to a railway or to a steamer route. The said tax shall be a terminal tax levied by means of a surcharge on fares to such railway or steamer stations near to the place of assemblage as the Local Government may direct, during such period as the Local Government may fix:

Provided that no surcharge on fares to a station on a railway, which falls within the definition contained in clause (*a*) of item 5 in Part I (Central subjects), Schedule I to the Devolution Rules, shall be imposed under this section except with the previous sanction of the Governor General in Council.

(*2*) In fixing the rate of the tax or taxes imposed under sub-section (*1*) in connection with any *mela*, fair, show, festival or other similar assemblage, the District Board shall, so far as may be, take into consideration the amount that is required to secure—

(*i*) the proper sanitation of the place of assemblage during the period of such assemblage;

(*ii*) the development and improvement of such place as a place of assemblage; and

(*iii*) the measures required for the safety, convenience and health of the pilgrims or other persons resorting to such place during such period.

(*3*) The moneys realised by the District Board on account of any tax imposed under sub-section (*1*) shall, after deducting the cost of collection, be expended solely for the purposes set forth in clauses (*i*), (*ii*) and (*iii*) of sub-section (*2*):

Provided that, if in the opinion of the District Board there is no likelihood that a *mela*, fair, show, festival or similar assemblage, on account of which the tax under this section has been paid, will again be held within three years, the District Board may

(*Clause 7.*)

credit to the District Fund for general purposes any surplus moneys received in respect of that assemblage :

Provided also that with the sanction of the Local Government the District Board may expend surplus moneys received in respect of any assemblage under this section on objects other than those set forth in clauses (*i*), (*ii*) and (*iii*) of sub-section (*2*), if in the opinion of the District Board such expenditure will assist the holding of such assemblage in the future.

(*4*) Where the District Board has imposed a tax under sub-section (*1*) in respect of any *mela*, fair, show, public festival or similar assemblage, it may expend in advance for the purposes set forth in clauses (*i*), (*ii*) and (*iii*) of sub-section (*2*) moneys from the District Fund in connection with that assemblage subject to such limits as the Local Government may by general or special order impose.

(*5*) For the purposes of this section the District Board may determine whether any assemblage, though held at a different place from the place where, or at a different time of year from the time at which, a like assemblage was formerly held, is a repetition of the former assemblage so as to form an assemblage in respect of which taxation may be imposed and expenses may be incurred under the provisions of this section, and the decision of the District Board shall be final.

Power to District Board to regulate private markets

52D. (*1*) On and after such date as may be notified by the Local Government in this behalf generally or in respect of any district, no person shall, except in accordance with a license granted by the District Board—

(*i*) establish a new private market for the sale of, or for the purpose of exposing for sale, any living thing intended for human food or any other article of human food, or

(*ii*) keep open any private market or wilfully or negligently permit any place to be used as a private market :

Provided that the District Board shall not—

(*a*) refuse a license for the maintenance of a market lawfully established at the date so notified, if application be made within six months from that date, except on the ground that the place where the market is established fails to comply with such conditions as to sanitation, drainage, water-supply and width of paths and ways as the District Board may by law prescribe generally in respect of markets in the district or in respect of any particular class of market, or

(*b*) cancel, suspend or refuse to renew any license granted under this section for any cause other than the failure of the licensee to comply with the conditions of the license.

(*Clauses 8-13.*)

(*2*) A license granted under sub-section (*1*) shall remain in force for one year unless it is suspended or cancelled by the District Board for breach of any of its conditions.

(*3*) There shall be paid for every license granted under sub-section (*1*) such fee as may be fixed by the District Board."

Amendment of section 53.

8. In section 53 of the said Act—

(*i*) the word "and" at the end of clause (*c*) under the heading "Fifthly" shall be omitted and to clause (*d*) under that heading the following shall be added, namely :—

"and any loans granted to Union Boards under this Act".

(*ii*) to clause (*d*) under the heading "Sixthly" the following shall be added, namely :—

"and of their subsistence thereat."

Amendment of section 64A

9. In clause (*c*) of section 64A of the said Act after the words "furtherance of" the word "primary," shall be inserted.

Amendment of section 86A

10. For the word "four" in clause (*c*) of proviso (*1*) to section 86A of the said Act the word "five" shall be substituted, and for the words "ten thousand rupees" in proviso (*2*) to that section the words "five thousand rupees" shall be substituted.

Amendment of section 99

11. In section 99 of the said Act for the word "prescribed" the word "fixed" shall be substituted.

Amendment of section 100

12. In section 100 of the said Act the word "and" at the end of clause (*3d*) shall be omitted and after that clause the following shall be added, namely :—

"(*3e*) provide for the improvement of agriculture, and".

Insertion of new section 100A.

13. After section 100 of the said Act the following shall be inserted, namely :—

"100A. (*1*) The District Board may grant, subject, to such conditions as regards the rate of interest and the period and method of repayment as the Local Government may be rule impose, loans to Union Boards to assist them in the performance of duties imposed on them by this Act or by the Bengal Village Self-Government Act, 1919.

Power to District Board to grant loans to union boards

(*2*) The payment of interest on, and repayment of any loans granted by the District Board to a Union Board shall be a charge on the Union Fund and shall take precedence over all other charges on that fund other than those referred to in the first proviso to sub-section (*2*) of section 46 of the Bengal Village Self-Government Act, 1919".

(*Clause 14.*)

Amendment of section 138.

14. In section 138 of the said Act—

(*i*) after clause (*h2*) the following shall be inserted, namely:—

"(*h3*) prescribing the manner in which and the authority by which the tax on carriages shall be assessed and collected, and the manner of making and hearing objections to such assessment and the authority by which such objections shall be heard;

(*h4*) prescribing the manner in which and the authorities and persons by which the tax on persons attending *melas*, fairs, shows, public festivals and similar assemblages shall be collected, the payments thereof to District Boards, the deduction of any expenses incurred by railway administrations or steamer companies in the collections thereof, and the limits subject to which the District Board may advance money for expenditure in connection with such *melas*, fairs, shows, public festivals or similar assemblages";

(*ii*) after clause (*p*) the following shall be inserted, namely:—

"(*p1*) prescribing the conditions as to the rate of interest and the period and method of repayment of loans granted by the District Board to Union Boards under section 100A."

STATEMENT OF OBJECTS AND REASONS.

The general amendment and consolidation of the Bengal Local Self-Government Act of 1885, is long overdue, and it is intended at a very early date to lay a measure of this kind before the Legislative Council. In the meantime it is proposed to include certain minor amendments in a short amending Bill. Controversial matters have, on the whole, been avoided, although it is recognized that there may be differences of opinion regarding the proposed *mela* tax.

2. It is considered desirable to take provision to tax motor vehicles since the volume of motor traffic is increasing in rural areas. As drafted, the clause will cover horse-drawn vehicles.

3. Sections 7, 10, 11, 15 and 25 of the present Act vest certain powers of appointment in the Divisional Commissioner, these powers prior to 1908 having been vested in the Local Government. The devolution of power effected by the amending Act V of 1908 was to some extent undone by the enactment of section 29 B in the Bengal Laws Act of 1914. Section 29 B to some extent supersedes the provisions of the earlier sections 7, 10, etc. The nomination of the Municipal Commissioners rests with the Local Government and not the Divisional Commissioner, and having regard to the fact that District Boards are now, generally speaking, of greater importance than the majority of the municipal boards in Bengal, it is considered advisable to give the Local Government the same power of nomination in respect of rural bodies as they already enjoy in respect of municipal boards This is done in clause 3 of the present Bill, and at the same time the Local Government are required to nominate persons who may represent minorities or be especially fitted for membership of the District Board.

4. In clause 4 of the Bill, more time is given for forwarding a copy of the proceedings of the District Board to the District Magistrate. No comment is necessary on clause 5 of the Bill.

5. Clause 7 provides for the investment of surplus moneys of District Fund in the Imperial Bank or in other banks approved by the Local Government.

It also authorizes the levy of a tax on carriages, which term includes motor vehicles.

6. Power is also taken to impose a tax on *melas*, fairs, etc. It is a matter of common knowledge that these gatherings are frequently the foci of infectious disease which is disseminated to all parts of the province. At present local bodies are unable to provide funds for the proper sanitation of places where such gatherings occur, and are unable to take measures for preventing the outbreak, and for restricting the spread, of infectious disease If a small tax is imposed on persons for frequenting *melas*, fairs, etc., sufficient revenue may probably be realized to enable local authorities to organize the necessary medical and sanitary measures. It is recognized that there are difficulties in collecting such a tax within the *mela* limits since in Bengal these are ordinarily not well defined, and it is therefore proposed to limit the impost to a surcharge on railway or steamer tickets where these can be levied within a reasonable distance of the *mela* site. The sanction of the Governor-General in Council to a surcharge of this kind is required under the Bill in the case of a railway. It is provided that the amount realized by means of such surcharge should be utilized in providing for the safety, convenience and health of persons frequenting the *mela*, fair, etc.

7. Power is also taken to regulate private markets. The grant of licenses is intended as a sanitary rather than a revenue measure.

8. Power is taken to grant loans to Union Boards. It is thought that the Union Boards may be able to take some steps to cope with the water-supply problem in rural areas and in that case District Boards may render some assistance by lending money to Union Boards on the security of the Union Fund on reasonable terms (*vide* clauses 8 and 13).

Clause 8 of the Bill also enables the District Board to provide for the subsistence charges of indigent persons whom it may have sent to a hospital in any part of British India for the treatment of a special disease.

9. Clause 9 will enable the District Board to establish scholarships for the furtherance of primary education. It is at present able to give scholarships merely for technical or other special forms of education, although the promotion of primary education is an important function of local bodies.

10. In clause 10 power is taken to levy tolls in the case of a bridge which has cost only Rs. 5,000 whereas under the present Act tolls can only be levied if a bridge has cost not less than Rs. 10,000.

SURENDRA NATH BANERJEA,

Member-in-charge.

CALCUTTA;

The 9th July, 1923.

C. TINDALL,

Secretary to the Government of Bengal and Secretary to the Bengal Legislative Council.



The Calcutta Gazette

WEDNESDAY, SEPTEMBER 12, 1923.

PART IV.

Bills introduced in the Bengal Legislative Council, Report of Select Committees presented or to be presented in that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 2215L., dated Calcutta, the 30th August, 1923.—The following Bill was introduced in the Bengal Legislative Council on the 16th August, 1923, and is hereby published for general information, together with the Statement of Objects and Reasons annexed thereto :—

THE BENGAL MUNICIPAL BILL, 1923.

SUMMARY OF CONTENTS.

PART I.

PART II.

PART III.

SCHEDULES.

THE BENGAL MUNICIPAL BILL, 1923.

CONTENTS.

PART I.

CHAPTER I.

PRELIMINARY.

PART II.

CHAPTER II.

THE MUNICIPALITIES.

The creation of municipalities.

PART III.

CHAPTER III.

THE MUNICIPAL AUTHORITIES.

The constitution of the municipality.

CLAUSE.

16. Constitution of municipalities included in Schedule II.
17. Special provision in regard to industrial areas.
18. Power to divide municipality into wards.
19. The electoral roll.
20. General disqualifications for being a Commissioner.
21. Qualifications of Commissioners and voters.
22. Election of Commissioners.
23. On failure of election, Commissioners to be appointed by Government.
24. Voting to be by secret ballot.
25. Offences in respect of electoral list.
26. Corrupt practices.
27. Fraudulent voting and personation.
28. Infringement of secrecy of election.
29. Offences by polling officers.
30. Falsifying result of election.
31. Procedure before Magistrate.
32. Order of disqualification.
33. Proceedings to set aside an election.
34. Procedure and powers of Judge holding inquiry.
35. Declaration in case of corrupt practice by candidate.
36. Scrutiny of votes and declaration in other cases.
37. Disqualification of candidates for corrupt practice.
38. Saving of acts done by a Commissioner before his election is set aside.
39. Fresh election when election set aside.
40. Bar to interference by courts in election matters.
41. Rules.
42. Election of Chairman.
43. Appointment of Chairman on failure to elect or on request of Commissioners.
44. Status of appointed Chairman.
45. Election of Vice-Chairman.
46. Disputes as to election of Chairman or Vice-Chairman.
47. Publication of elections and of nominations.
48. Powers of Chairman.
49. Delegation of duties or powers to Vice-Chairman or certain officers.
50. Duties of Vice-Chairman.
51. Grant of leave to Chairman and Vice-Chairman.
52. Tenure of office of Chairman, Vice-Chairman and Commissioners.

CLAUSE.

125. Revision and duration of the list.
126. Amendment and alteration of list.
127. Conclusiveness of entries in list.
128. Power to assess building and lands together where land is let on a building lease.
129. Power to reduce rates in cases of excessive hardship.
130. Remission or refund on account of vacant holdings.
131. Owner to give notice of re-occupation.
132. Notice to be given to the Chairman of all transfers of title of persons primarily liable to payment of rates.

General provisions relating to assessment.

133. Appointment of assessors of municipal rates.
134. Appointment of assessor by Local Government in case of default.
135. Publication of notice of assessments.
136. Application for review.
137. Hearing and determination of applications by committee.
138. Assessment to be questioned only under Act.
139. Payment of rate how affected by objections to valuation.

Recovery of Taxes.

~~140. Office hours for payment of~~ taxes.
141. Amount of tax payable, and tax to be paid in advance.
142. Receipts to be given.
143. Bill and notice of demand to be presented.
144. Levy by distress on failure to pay tax, toll, fee or rate.
145. Distress how to be made.
146. Officer may break open door.
147. Sale how to be conducted.
148. Sale of property beyond limits of municipality.
149. Commissioners to keep account of distresses and sales.
150. Power to Commissioners to bring suits in place of distress.
151. Irrecoverable taxes.
152. Certain persons prohibited from purchasing at sales.

Recovery in special cases.

153. Recovery from occupier of tax due from non-resident owner and deduction from rent.
154. Recovery by owner from tenant of three-fourths of certain rates.
155. Recovery as rent of rate paid by owner.

The tax on carriages and on horses and other animals.

The dog-tax.

The registration of carts.

Tolls on ferries.

CLAUSE.

207. Power to Commissioners to take possession of, and add to street, land situated within prescribed street alignment or covered by projecting buildings.

208. Power to Commissioners to set buildings forward to improve line of public street.

Opening, improvement and closing of public streets, squares and gardens.

209. Power to Commissioners to make, improve and close public streets, squares and gardens.

210. Power to Commissioners to dispose of so much of a permanently-closed street, square or garden as is not required.

Projected public streets.

211. Projected public streets.

212. Provisions of section 206 to apply to projected public streets.

Special provisions as to private streets.

213. Making of new private streets.

214. Owner's obligation to make a street when disposing of land as building sites.

215. Prohibition of breach of section 213.

216. Alteration or demolition of street made in breach of section 213.

217. Levelling, etc., of private streets.

218. Power to Commissioners to take over private streets.

Supplemental provisions for regulating and protecting streets.

219. Duties of Commissioners when constructing public streets, etc.

220. Hoardings to be set up during repairs.

221. Leave to deposit materials temporarily on, or to excavate or close, a street.

222. Power to close a street or part of a street for repairs or other public purpose.

223. Sanction of Commissioners to projection over streets and drains.

224. Erection of platforms.

225. Removal of fallen house, etc., obstructing street or drain.

226. Penalty for cutting street.

227. Regulation of troughs and rain-water pipes affecting a street.

228. Notice to remove encroachments over house-gullies, etc.

CHAPTER VII.

CONSERVANCY AND DRAINAGE.

Removal of sewage, rubbish and offensive matter.

CLAUSE.

CHAPTER VIII.

WATER-SUPPLY, LIGHTING, DRAINAGE AND SEWERAGE SYSTEMS.

CLAUSE.

274. Wires, pipes, drains or sewers laid or carried above surface of ground.
275. Previous notice to be given.
276. Power to permit connections to houses and lands.
277. Power to make or require connections in certain cases.
278. Power to establish meters and the like.
279. Attachment of meters.
280. Power to enter premises.
281. Presumption as to correctness of meter.
282. Cost of providing, attaching and replacing meter.
283. Commissioners to replace damaged meter.
284. Testing of meter.
285. Fraud in respect of meter.
286. Injuring meter or fittings.
287. Maintenance of supply of water.
288. Supply for business.
289. Free supply of certain quantity of water for domestic purposes.
290. Inspection of works and pipes before connection.
291. Permission to person outside the municipality to take water.
292. Water not to be taken out of municipality or wasted.
293. Owner to bear the cost of keeping works in repair.
294. Estimate and specification of works to be sent.
295. Power to take charge of private connections.
296 Power to cut off or turn off supply of water to premises.
297. Power to make rules.

CHAPTER IX.

BUILDINGS.

Application of Schedule VI.

298. Application of Schedule VI.

Building sites and erection of buildings.

299. Use of building sites and erection of buildings.
300. Commissioners to determine site of proposed masonry building.
301. Masonry building not to be erected without special permission in certain cases.

Exemptions.

302. Exemptions.

Application for sanction.

Markets.

CHAPTER XVIII.

WEIGHTS AND MEASURES.

CHAPTER XIX.

FOOD AND DRUGS.

Sale of food and drugs.

Inspection, seizure and destruction of food and drugs.

CHAPTER XXI.

NUISANCE.

CHAPTER XXII.

GENERAL.

Education.

The Board of Public Health.

Sarais, dharamsalas and lodging-houses.

Hackney-carriages.

Survey.

Dogs.

Publication of rules, by-laws, orders and notices.

CLAUSE.

Signature and service of notices, etc.

Powers of entry and inspection.

Enforcement of requisitions.

Recovery of costs and expenses.

Appeals.

Prosecutions.

THE BENGAL MUNICIPAL BILL, 1923.

A Bill to consolidate and amend the law relating to Municipalities in Bengal.

[*Note.*—C. M. Act in the right hand margin means the Calcutta Municipal Act, 1923, (Ben. Act III of 1923).]

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Municipalities in Bengal;

And whereas the previous sanction of the Governor-General has been obtained under sub-section (*3*) of section 80A of the Government of India Act to the passing of this Act; 5 & 6 Geo. 5, c. 61; 6 & 7 Geo. 5, c. 37; 9 & 10 Geo. 5, c. 101.

It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Bengal Municipal Act, 1923. [*Cf.* Ben. Act III of 1884, s. 1.]

(*2*) It extends to the whole of Bengal, except Calcutta as defined by clause (*11*) of section 3 of the Calcutta Municipal Act, 1923. Ben. Act III of 1923.

(*3*) It shall come into force on such date as the Local Government may, by notification, direct.

(*4*) Notwithstanding anything contained in sub-section (*2*), it shall not take effect in any cantonment or part of a cantonment without the consent of the Governor-General in Council previously obtained. [*Cf.* Ben. Act III of 1884, s. 5.]

(*5*) Those provisions of this Act which are solely applicable to any part of the Darjeeling district shall come into operation only on such date and subject to such exceptions and modifications as the Governor in Council may, by notification, direct. [*Cf.* para 1 (*b*) of schedule, Govt. of India Notifn. No 2 G., dated 3rd Jan., 1921.]

Repeals, savings and amendments.

2. The enactments mentioned in Schedule 1, so far as they are in force in Bengal, are hereby repealed to the extent specified in the last column thereof: [*Cf.* Ben. Act III of 1884, s. 2.]

Provided that all municipalities constituted, bodies of Commissioners established, limits defined, regulations, measurements and divisions made, licenses and notices issued, taxes, tolls, rates and fees imposed or assessed, budgets passed, assessments made, plans approved, permissions or sanctions granted under the said Act, shall, so far as they are in force at the commencement of, and are not inconsistent with this Act, be deemed to have been respectively constituted, established, defined, issued, imposed, assessed, passed, made, approved or granted under this Act, and shall (unless previously altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under this Act) remain in force for the period (if any) for which they were so constituted, established, defined, issued, imposed, assessed, passed, made, approved or granted. [*Cf.* C. M. Act, s. 2 (*3*)]

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,— [*Cf.* Ben. Act III of 1884, s. 6 (*14A*).]

"Board of Public Health".

(*1*) "Board of Public Health" means the persons for the time being appointed by the Local Government by notification to constitute a Board of Public Health for Bengal;

"Bridge".

(*2*) "bridge" includes a culvert; [*Cf.* Ben. Act III of 1884, s. 6 (*20*).]

(*Chapter I.—Preliminary.—Clause 3.*)

"Building". (*3*) "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall (other than a boundary wall not exceeding ten feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever, but does not include "a hogla" or other similar kind of temporary shed erected on ceremonial festive occasions; [Cf. C. M Act, s. 3 (7)]

"Building-line". (*4*) "building-line" means the line up to which the main wall of a building abutting on a street or a projected public street may lawfully extend; [Cf. C. M. Act, s. 3 (8).]

"*Bustee*". (*5*) "*bustee*" means an area containing land occupied by, or for the purposes of, any collection of huts; [Cf. C. M. Act, s. 3 (10).]

"Carriage". (*6*) "carriage" means any wheeled vehicle, with springs or other appliances acting as springs, which is used for the conveyance of human beings, and includes a *jinrickshaw*, but does not include a bicycle or a tricycle (other than a motor-bicycle or motor-tricycle), or a perambulator or other form of vehicle designed for the conveyance of small children; [Cf. C. M. Act, s. 3 (13).]

"Cart". (*7*) "cart" means any cart, hackery or wheeled vehicle with or without springs, which is not a "carriage" as defined in this section, and includes a hand-cart, but does not include a perambulator or other form of vehicle designed for the conveyance of small children; [Cf. C. M. Act, s. 3 (14).]

"Connected-privy". (*8*) "connected-privy" means a privy which is directly connected with a sewer; [Cf. C. M Act, s. 3 (15).]

"Conservancy". (*9*) "conservancy" means the removal and disposal of "sewage", "offensive matter" and "rubbish"; [New.]

"Cubical extent". (*10*) the expression "cubical extent", when used with reference to the measurement of a building, means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest or only storey; [Cf. C. M. Act, s. 3 (18).]

"Dairy". (*11*) "dairy" includes any farm, cattle-shed, cow-house, milk-store, milk-shop or other place from which milk is supplied only on, or for, sale or in which milk is kept, or used for the purposes of sale, or manufacture into butter, *ghee*, cheese, curds, or dried or condensed milk, for sale, [Cf. C. M. Act, s. 3 (19).]

and in the case of a dairyman, who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in properly closed and unopened receptacles in which it was delivered to the shop, or a shop, or other place in which milk is sold for consumption on the premises only or a shop or place from which milk is sold or supplied in hermetically closed and unopened receptacles in the same original condition in which it was first received in such shop or place;

"Dangerous disease". (*12*) "dangerous disease" means— [Cf. C. M Act, s. 3 (21).]

(*a*) cholera, plague, small-pox, cerebro-spinal meningitis and diptheria; and

(*b*) any other disease which the Local Government may, by notification, declare to be a dangerous disease for all or any of the purposes of this Act;

"District Magistrate". (*13*) "District Magistrate" means the chief magistrate in a district; [Cf. Ben. Act III of 1884, s. 6 (7).]

(*Chapter I.—Preliminary.—Clause 3.*)

"Drain" (*14*) "drain" includes a sewer, a house-drain, a drain of any other description, a tunnel, a culvert, a ditch, a channel and any other device for carrying off sullage, sewage, offensive matter, polluted water, rain-water or sub-soil water; [*Cf.* C. Act, s (*25*).]

'Drug' (*15*) "drug" means any substance used as medicine or in the composition or preparation of medicines, whether for internal or external use; [*Cf.* C. M. Act, s (*26*).]

"Dwelling-house". (*16*) "dwelling-house" means a masonry or framed building constructed, used or adapted to be used wholly or principally for human habitation; [*Cf.* C. M. Act, s (*27*).]

'Food' (*17*) "food" includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food, and also includes confectionery, flavouring and colouring matters and spices and condiments; [*Cf.* C. M. Act, s (*31*).]

"Framed building" (*18*) "framed building" means a building the external walls of which are constructed of timber framing or iron framing, and the stability of which depends on such framing, but shall not include any small or temporary building of this type which the Commissioners at a meeting may declare to be a hut for the purposes of this Act; [*Cf.* Ben Act III of 1884, s 6 (*23*).]

"Habitable room". (*19*) "habitable room" means a room constructed or adapted for human habitation; [*Cf.* C. M. Act, s (*32*).]

"Health Officer" (*20*) "Health Officer" includes a "Medical Officer of Health"; [New.]

"Hill Municipality". (*21*) "hill municipality" means the Darjeeling Municipality and any other Municipality, wholly or in part situated in a hilly tract, which the Local Government may, by notification, declare to be a "hill municipality"; [New]

"Holding" (*22*) "holding" means land held under one title or agreement and surrounded by one set of boundaries: [*Cf.* Ben. Act III of 1884, s. 6 (*3*).]

Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling-house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act.

Explanation.—Holdings separated by a street or other means of communication shall be deemed to be adjoining within the meaning of this proviso;

'House' (*23*) "house" includes any hut, shop or warehouse; [*Cf.* Ben. Act III of 1884, s. 6 (*4*).]

'House-gully' (*24*) "house-gully" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or of affording access to a privy, urinal, cesspool or other receptacle for filthy or polluted matter to municipal servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom, and includes the air space above such passage or land; [*Cf.* C. M. Act, s (*35*).]

'Hut' (*25*) "hut" means any building which is constructed principally of wood, mud, leaves, grass or thatch, and includes any temporary structure of whatever size or any small building (not being a masonry building) of whatever material made which the Commissioners at a meeting may declare to be a hut for the purposes of this Act; [*Cf.* Mad Act V of 1920, s 3 (*11*).]

"Inhabitant". (*26*) "inhabitant" used with reference to any local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein; [*Cf.* U. P. Act II of 1916, s. 2 (*7*).]

(*Chapter I.—Preliminary.—Clause 3.*)

"Inhabited room". (*27*) "inhabited room" means a room in which some person passes the night, or which is used as a living room, and includes a room with respect to which there is a reasonable presumption (until the contrary is shown) that some person passes the night therein or that it is used as a living room; [*Cf.* C. M. Act, s. 3 (*36*).]

"Land". (*28*) "land" includes benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth; [*Cf.* Ben. Act III of 1884, s. 6 (*5*).]

"Living thing". (*29*) "living thing" includes any animal, bird or fish; [New.]

"Lodging-house". (*30*) "lodging-house" means a house in which— [New.]

(*i*) pilgrims, or

(*ii*) persons of the poorer classes

are harboured or lodged for hire for a single night or for some other short period and where there is ordinarily community of eating or sleeping accommodation, and in all cases of doubt shall be deemed to include any place which the Commissioners at a meeting may declare to be a lodging-house;

"Market". (*31*) "market" includes any place where persons assemble for the sale of any living thing intended for human food or of any article of food; [*Cf.* C. M. Act, s. 3 (*39*).]

"Masonry building". (*32*) "masonry building" means any building other than a framed building or a hut and includes any structure a substantial part of which is made of masonry or of steel, iron or other metal; [*Cf.* Ben. Act III of 1884, s. 6 (*6*); C. M. Act, s. 3 (*40*).]

"Municipal drain". (*33*) "municipal drain" means a drain vested in the Commissioners; [*Cf.* C. M. Act, s. 3 (*43*).]

"Municipality". (*34*) "municipality" means any place in which this Act, or any part thereof, is in force; [*Cf.* Ben. Act III of 1884, s. 6 (*9*).]

"Notification". (*35*) "notification" means a notification published in the *Calcutta Gazette*; [*Cf.* Ben. Act V of 1919, s. 4 (*7*).]

"Occupier". (*36*) "occupier" means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the land or building in respect of which the word is used or damages on account of the occupation of such land or building, and includes an owner living in, or otherwise using, his own land or building and also a rent-free tenant; [*Cf.* C. M. Act, s. 3 (*48*); Ben. Act III of 1884, s. 285.]

"Offensive matter". (*37*) "offensive matter" means kitchen or stable refuse, dung, dirt, putrid or putrifying substances and filth of any kind which is not included in "sewage" as defined in this section; [*Cf.* C. M. Act, s. 3 (*49*).]

"Owner". (*38*) "owner" includes the person for the time being receiving the rent of any land or building or of any part of any land or building whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver, or who would so receive such rent if the land, building or part thereof were let to a tenant; [*Cf.* C. M. Act, s. 3 (*50*).]

"Plinth". (*39*) "plinth" means the part of a wall or structure between the ground-level and the level of the lowest floor of a building; [*Cf.* Ben. Act III of 1884, s. 6 (*28*).]

"Premises". (*40*) "premises" includes lands, buildings, vehicles, tents, vans, structures of any kind, streams, lakes, sea-shore, drains, ditches or places open, covered, or enclosed, whether built on or not, and whether public or private, and whether natural or artificial, and whether maintained or not under statutory authority, [New.]

(*Chapter I.—Preliminary.—Clause 3.*)

and any vessel lying in any river, harbour or other water not being a port declared under the Indian Ports Act, 1908; XV of 1908.

"Prescribed". (*41*) "prescribed" means prescribed by this Act or by rules or by-laws made thereunder; [New.]

"Private drain". (*42*) "private drain" means any drain which is not a municipal drain as defined in this section; [*Cf.* Ben. Act III of 1884, s. 6 (*30*).]

"Private street". (*43*) "private street" means any street, road, lane, gully, alley, passage or square which is not a "public street" as defined in this section, and includes any passage securing access to four or more premises, whether belonging to the same or different owners, but does not include a passage provided in effecting the partition of any masonry building amongst joint owners, where such passage is not less than eight feet wide; [*Cf.* C. M. Act, s. 3 (*54*).]

"Public street". (*44*) "public street" means any street, road, lane, gully, alley, passage, pathway, square or court whether a thoroughfare or not, over which the public have a right of way, and includes— [*Cf.* C. M. Act, s. 3 (*57*).]

(*a*) the roadway over any public bridge or causeway,

(*b*) the footway attached to any such street, public bridge or causeway, and

(*c*) the drains attached to any such street, public bridge or causeway, and, where there is no drain attached to any such street, shall be deemed to include also, unless the contrary is shown, all land up to the boundary wall, *ail*, hedge or pillar of the premises, if any, abutting on the street, or, if a street alignment has been fixed, then up to such alignment;

"Registered medical practitioner". (*45*) "registered medical practitioner" means a medical practitioner registered under the Bengal Medical Act, 1914; [*Cf.* C. M. Act, s. 3 (*59*).] Ben. Act VI of 1914.

"Rubbish". (*46*) "rubbish" means dust, ashes, broken bricks, mortar, broken glass, and refuse of any kind which is not "offensive matter" or "sewage" as defined in this section; [*Cf.* C. M. Act, s. 3 (*61*).]

"Sewage". (*47*) "sewage" means night-soil and other contents of privies, urinals, cesspools or drains, and includes trade effluents and discharges from manufactories of all kinds; [*Cf.* C. M. Act, s. 3 (*64*).]

"Slaughter-house". (*48*) "slaughter-house" means any place used for the slaughter of cattle, sheep, goats, kids or pigs for the purpose of selling the flesh thereof as meat; [*Cf.* C. M. Act, s. 3 (*66*).]

"Street". (*49*) "street" means a public or private street; [*Cf.* C. M. Act, s. 3 (*67*).]

"Street alignment". (*50*) "street aligment" means the line dividing the land comprised in and forming part of a street from the adjoining land; [*Cf.* C. M. Act, s. 3 (*68*).]

"The Commissioners". (*51*) "the Commissoners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under this Act; [*Cf.* Ben. Act III of 1884, s. 6 (*18*).]

"The Magistrate". (*52*) "the Magistrate" includes the District Magistrate, the Magistrate in charge of a division of the district in which division a municipality is constituted, and every Magistrate subordinate to the District Magistrate to whom the District Magistrate may have made over any duties under this Act; [*Cf.* Ben. Act III of 1884, s. 6 (*8*).]

(*Chapter I.—Preliminary.—Clauses 4, 5.*)

"Watercourse". (*53*) "watercourse" includes any river, stream, or channel, whether natural or artificial; [*Cf.* Mad. Act V of 1920 s. 3 (*30*).]

"Water for domestic purposes". (*54*) "water for domestic purposes" shall not be deemed to include a supply— [*Cf.* C. M Act, s. 3 (*24*).]

(*a*) for animals or for washing carriages, where such animals or carriages are kept for sale or hire,

(*b*) for any trade, manufacture or business,

(*c*) for fountains,

(*d*) for watering gardens or streets,

(*e*) for any ornamental or mechanical purpose,

(*f*) for building purposes, or

(*g*) for flushing purposes, except a supply allowed for flushing connected privies in accordance with a resolution of the Commissioners;

"Water-works". (*55*) "water-works" includes all lakes, tanks, streams, cisterns, springs, pumps, wells, reservoirs, aqueducts, cuts, sluices, mains, pipes, culverts, engines, hydrants, stand-pipes, conduits, and all machinery, lands, buildings, bridges, and things for supplying or used for supplying water; [*Cf.* U. P. Act II of 1916, s. 2 (*26*).]

"Year". (*56*) "year" means a year beginning on the first day of April, or on such other date as may hereafter be fixed for any municipality by the Local Government by notification. [*Cf.* Ben. Act III of 1884, s. 6 (*19*).]

Extent of power conferred on an authority. **4.** (*1*) Where a power is expressed as being conferred on any authority to require a person to do one thing or do another thing, that authority may, in its discretion, require the person to do either thing or, if the nature of the case permits, both of the things, or may give the person the option of doing whichever of the things he chooses. [*Cf.* U. P. Act II of 1916, s. 2 (*27*).]

(*2*) Where the power is expressed as being conferred on any authority to require a person to do a number of things, that authority may from time to time in its discretion require that person to do any one or more of those things.

Power to define character of building. **5.** The Commissioners may decide whether any particular building is a masonry building, a framed building, or a hut, as defined in section 3, and their decision shall be final. [Ben. Act III of 1884, s. 6A.]

PART II.

CHAPTER II.

THE MUNICIPALITIES.

The creation of Municipalities.

Declaration of intention to constitute or alter limits of municipality.

6. (*1*) The Local Government may, by notification, and by such other means as they may determine, declare their intention— [Cf. Ben. Act III of 1884, s. 8.]

(*a*) to constitute any town, together with, or exclusive of, any railway station, village, land or building in the vicinity of any such town, a municipality under this Act; or

(*b*) to withdraw any municipality from the operation of this Act; or [Cf. Ben. Act III of 1884, s. 9.]

(*c*) to exclude from a municipality any local area comprised therein and defined in the notification; or

(*d*) to include within a municipality any local area contiguous to the same and defined in the notification; or

(*e*) to subdivide any municipality into two or more municipalities; or

(*f*) to unite two or more municipalities so as to form one municipality; or

(*g*) to define the limits of any municipality; or

(*h*) to alter the number of Commissioners of a municipality:

Provided that a declaration shall not be made—

(*i*) under clause (*a*), unless the Local Government are satisfied that three-fourths of the adult male population of the town to which it refers are chiefly employed in pursuits other than agriculture, and that such town contains not less than three thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town; [Cf. Ben. Act III of 1884, s. 10.]

(*ii*) under clauses (*b*) to (*g*), in the case of any municipality in which the conditions specified in proviso (*i*) are complied with, except on the recommendation of the Commissioners of the municipality, or each of the municipalities concerned at a meeting; [Cf. Ben. Act III of 1884, s. 9.]

(*iii*) under clause (*d*), unless the Local Government are satisfied that three-fourths of the adult male population of the local area to which it refers are chiefly employed in pursuits other than agriculture; [Cf. Ben. Act III of 1884, s. 9, prov. 1.]

(*iv*) where any part of a town or local area affected by any declaration under this section is a cantonment or part of a cantonment, without the consent of the Governor-General in Council previously obtained. [Cf. Ben. Act III of 1884, s. 9, prov. 3.]

(Chapter II.—The Municipalities.—Clauses 7-10.)

(*2*) A copy, both in English and in Bengali, of every notification issued under sub-section (*1*) shall be posted up in a conspicuous place in the office of the Commissioners of the municipality or municipalities concerned, or, in the case of a notification under clause (*a*) of that sub-section, in the office of the District Magistrate, and in such other public places as the Commissioners or the District Magistrate, as the case may be, may direct; [*Cf.* Ben. Act III of 1884, ss. 8 and 8A.]

and a public proclamation shall be made by beat of drum throughout the municipality or local area concerned that such copy has been so posted up, and is open to inspection in such office.

Consideration of objections.

7. Any inhabitant of the town or local area, or any rate-payer of the municipality or municipalities, in respect of which a notification has been published under section 6 may, if he objects to anything contained in the notification, submit his objection in writing through the District Magistrate to the Local Government within six weeks from the date of the publication, and the Local Government shall take his objection into consideration. [*Cf.* Ben. Act III of 1884, ss. 8 and 9A.]

Constitution, abolition or alteration of limits of municipality.

8. When six weeks from the date of the publication of the notification have expired, and after considering any objections which may be submitted, the Local Government may by notification— [*Cf.* Ben. Act III of 1884, ss. 8 and 9A; Pun. Act III of 1911, s. 4 (*5*) and (*6*); C. P. Act XVI of 1903, s. 5.]

(*a*) constitute the town or any specified part thereof a municipality under this Act; or

(*b*) withdraw the whole area comprised in the municipality from the operation of this Act; or

(*c*) include the local area or any part thereof in the municipality or exclude it therefrom; or

(*d*) subdivide the municipality into two or more municipalities or unite the municipalities, as the case may be; or

(*e*) define the limits of any municipality; or

(*f*) alter the number of Commissioners of a municipality.

Application of Act and subsidiary orders in areas included within a municipality.

9. When any local area is included in a municipality by a notification under section 8 all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area unless the Local Government in and by the notification otherwise direct. [New. *Cf.* Pun. Act III of 1911, s. 15 (*4*); C. P. Act XVI of 1903, s. 6.]

Continuance of Act and subsidiary orders in municipalities formed by subdivision.

10. When any municipality is subdivided into two or more municipalities by a notification under section 8 then, notwithstanding anything contained in this Act, all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such subdivision were in force in any part of the original municipality, shall be deemed to be in force in the same part of the municipalities formed by the subdivision, unless the Local Government in and by the notification otherwise direct. [New.]

(*Chapter II.—The Municipalities.—Clauses 11-13.*)

Discontinuance of Act and subsidiary orders in municipalities withdrawn from Act, or in areas excluded.

11. When the whole area comprised in a municipality is withdrawn from the operation of this Act, or when any part of such area is excluded from the municipality, by a notification under section 8, this Act, and all rules and by-laws made, orders, directions and notices issued and powers conferred thereunder shall cease to apply to such area or part, as the case may be. [New.]

Power to except municipality from provisions of Act unsuited thereto.

12. (*1*) If the circumstances of any municipality are such that, in the opinion of the Local Government, any of the provisions of this Act are unsuited thereto, the Local Government may, by notification, except the municipality or any part of it from the operation of those provisions; and thereupon the said provisions shall not apply to the municipality until applied thereto by notification. [*Cf.* Pun. Act III of 1911, s. 9; Ben. Act III of 1884, ss. 173, 174 and 220.]

(*2*) While such exception as aforesaid remains in force, the Local Government may make rules in respect of matters excepted from the operation of the said provisions.

Commissioners to erect and maintain boundary-marks.

13. The Commissioners of every municipality already existing, and of every municipality newly constituted under this Act and of every municipality whose local limits are altered as aforesaid, shall cause to be erected and set up and thereafter maintain, substantial boundary-marks defining the limits or the altered limits of the area subject to their authority, as set out in any notification published under this chapter. [*Cf.* Bom. Act III of 1901, s 4 (*3*).]

PART III.

CHAPTER III.

THE MUNICIPAL AUTHORITIES.

The constitution of the Municipality.

Constitution and incorporation of municipality and number of Commissioners.

14. (*1*) There shall be established for each municipality a body of Commissioners having authority over the municipality and consisting of such number of Commissioners, not being more than thirty nor less than nine, as the Local Government may specify in the notification constituting the municipality. [*Cf.* Ben. Act III of 1884, s. 13.]

(*2*) Such Commissioners shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the municipality is known, having perpetual succession and a common seal, and by that name shall sue and be sued. [*Cf.* Ben Act III of 1884, s. 29.]

Proportion of elected and appointed Commissioners.

15. Three-fourths of the total number of Commissioners shall be elected in the manner prescribed; the remaining one-fourth shall be appointed by the Local Government: [*Cf.* Ben. Act III of 1884, s. 14.]

Provided that—

(*1*) in cases where the whole number of Commissioners is not evenly divisible by four, the one-fourth shall be ascertained by taking the number, next below the whole number, which is evenly divisible by four, as the number to be divided;

(*2*) the Local Government may appoint all the Commissioners of a municipality newly created and constituted under this Act for a period not exceeding one year from the date of the notification, under which such municipality is created and constituted. [*Cf.* Mad. Act V of 1920, s. 10]

Constitution of municipalities included in Schedule II.

16. (*1*) Every municipality mentioned in Schedule II to this Act shall be excluded from the operation of section 15, and in any municipality so excluded four-fifths of the total number of Commissioners shall be elected in the manner prescribed and the remaining one-fifth shall be appointed by the Local Government: [New.]

Provided that in cases where the whole number of Commissioners is not evenly divisible by five, the one-fifth shall be ascertained by taking the number, next below the whole number, which is evenly divisible by five, as the number to be divided.

(*2*) The Local Government may, at any time, include in, or exclude from, the said schedule the name of any municipality.

Special provision in regard to industrial areas.

17. (*1*) Notwithstanding anything contained in section 15, the Local Government, by notification, stating the special circumstances, may in the case of a municipality the development of which in their opinion is due to and essentially dependant on the concentration of any industry or industries [New.]

(*Chapter III.—The Municipal Authorities.—Clauses 18-20.*)

(including railways and shipping and industries connected therewith),

(*i*) increase the number of nominated Commissioners beyond the proportion mentioned in that section in order to secure the proper representation of such industry or industries, or if it appears expedient to the Local Government that the industry or industries should be represented by elected Commissioners, constitute industrial constituencies for the representation of such industry or industries on such territorial basis as may appear to the Local Government to be expedient;

(*ii*) provide for the representation of the inhabitants who are not directly connected with such industry or industries by the formation of electoral constituencies for such inhabitants, on such territorial basis as may appear to the Local Government to be expedient;

and the Local Government may further provide for election by general electorates in any portion of such municipality.

(*2*) In any municipality to which the provisions of sub-section (*1*) are applied the electoral roll shall be prepared and the elections held in such manner as the Local Government may prescribe.

Power to divide municipality into wards.

18. (*1*) The Local Government may, by notification, divide any municipality into wards for the purpose of the election of Commissioners. [*Cf.* Ben. Act III of 1884, s. 15.]

(*2*) The Local Government may by rule make provision for the special representation, among the elected Commissioners of any municipality, of any class of the community (and specially of Muhammadans), when the persons of such class entitled to vote at an election of Commissioners form a minority of the total number of persons in the municipality so entitled to vote.

The electoral roll.

19. (*1*) The Chairman shall prepare and publish at the time and in the manner prescribed an electoral roll showing the names of persons qualified to vote. [New; *cf.* Ben. Act III of 1884, s. 15.]

(*2*) Every person whose name appears in the final electoral roll published under this section shall, so long as such roll remains in force, be entitled to vote at an election; and no person whose name does not appear in such roll shall vote at an election.

(*3*) When a municipality has been divided into wards the electoral roll shall be divided into separate lists for each ward.

(*4*) The electoral roll as published shall remain in force till the publication of a fresh electoral roll.

General disqualifications for being a Commissioner.

20. (*1*) A person shall not be eligible for election or appointment as a Commissioner if such person— [*Cf.* C. M. Act, s. 22.]

(*a*) is a female; or

(Chapter III.—The Municipal Authorities.—Clause 21.)

(*b*) has been adjudged by a competent court to be of unsound mind; or

(*c*) is under twenty-one years of age; or

(*d*) is an undischarged insolvent; or

(*e*) being a discharged insolvent, has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(*f*) is a municipal officer or holds any office of profit under the Commissioners otherwise than as specially provided in sections 60 and 99 or is a municipal servant; or

(*g*) has, directly or indirectly, by himself or by his partner or employer or any employé, any share or interest in any contract or employment with, by, or on behalf of, the Commissioners:

Provided that notwithstanding anything contained in clause (*g*) no person shall be deemed to be disqualified thereunder by reason only of his having a share or interest in—

(*i*) any lease, sale or purchase of land or any agreement for the same; or

(*ii*) any agreement for the loan of money or any security for the payment of money only; or

(*iii*) any newspaper in which any advertisement relating to the affairs of the Commissioners is inserted; or

(*iv*) any incorporated company which contracts with or is employed by the Commissioners.

(*2*) A person against whom a conviction by a criminal court involving moral turpitude and carrying with it a sentence of transportation or imprisonment for a period of more than six months is subsisting shall not, unless the offence of which he was convicted has been pardoned, be eligible for election or appointment for five years from the date of the expiration of the sentence.

Qualifications of Commissioners and voters.

21. (*1*) No person shall be qualified to be elected a Commissioner of a municipality, who is not entitled to vote at an election of Commissioners of such municipality. [*Cf* Ben. Act III of 1884, s. 15.]

(*2*) A person shall not be entitled to vote at an election of Commissioners in any municipality unless such person, being a male—

(*i*) has attained the age of twenty-one years, and

(*ii*) is a British subject or the subject of any State in India, or being an alien has been exempted from the disabilities imposed by the Bengal (Aliens) Disqualification Act, 1918, and Ben. Act III of 1918.

(*Chapter III.—The Municipal Authorities.— Clause 21.*)

(*iii*) is at the time of such election, and has been for a period of not less than twelve months immediately preceding such election, resident within the limits of the municipality, and either—

(*a*) has during the financial year, immediately preceding such election, paid in respect of any municipal rates, tolls, fees and taxes (other than cart registration fees) for such financial year an aggregate amount not less than the sum prescribed by the Local Government in this behalf as a minimum for the municipality, or

(*b*) has, during the said financial year, paid or been assessed to income-tax, or

(*c*) being a graduate or licentiate of any University, or having passed the Intermediate Examination in Arts or Science of the Calcutta University, or a corresponding standard of the same or any other University, or holding a license, granted by any Government Vernacular Medical School to practice medicine, or holding a certificate authorising him to practice as a pleader or as a *mukhtear* or as a revenue agent—occupies a holding, or part of a holding, in respect of which there has been paid as rates during the year aforesaid an aggregate amount not less than the sum prescribed by the Local Government in this behalf as a minimum for the municipality.

(*2a*) No person shall be entitled to vote at an election of Commissioners in any municipality who has been adjudged by a competent court to be of unsound mind:

Provided that, notwithstanding anything contained in clause (*i*) of sub-section (*2*) or in this sub-section the guardian of a minor, or the manager of a lunatic appointed by a court as such, shall be entitled to have his name registered on the electoral roll as the representative of the lunatic or minor, if, but for the provisions of that clause or this sub-section, as the case may be, such minor or lunatic would have been qualified as an elector.

(*3*) No company, body corporate, firm, joint family or other association of individuals shall be entitled to vote in its own name at an election, but the Local Government shall, subject to the provisions of the Bengal (Aliens) Disqualification Act, 1918, provide by rules for the representation of such company, body corporate, firm, joint family or other association as an elector, if it possesses the qualifications set forth in sub-clause (*a*) or sub-clause (*b*) of clause (*iii*) of sub-section (*2*).

(*4*) A member of a joint family, if he is qualified under clauses (*i*) and (*ii*) of sub-section (*2*) and if in his own name and otherwise than as a member of the joint family he is qualified under any of the provisions of clause (*iii*) of that sub-section, shall be entitled to vote at an election of Commissioners in his individual capacity.

(*Chapter III.—The Municipal Authorities.—Clauses 22-26.*)

Election of Commissioners.

22. (*1*) A general election and appointment of Commissioners shall be held and made under the provisions of this Act at such time as the Local Government may prescribe; but such election or appointment shall not take effect until the first day of 192 . [*Cf.* C. M. Act, s. 1.; Ben. Act III of 1884, s. 16.]

(*2*) General elections of Commissioners shall take place triennially on such days as the Commissioners of Divisions may fix for each municipality in their divisions:

Provided that where the term of office of the Commissioners of a municipality, as a body, has been extended by the Local Government under sub-section (*5*) of section 52, the general election for that municipality shall take place as early as possible after the expiration of such term on a day to be fixed by the Commissioner of the Division.

(*3*) Elections and appointments in respect of casual vacancies shall be held and made at such other times as may be prescribed in accordance with the provisions of this Act.

Explanation.—The election to fill the vacancy on the expiration of the term of office of an individual Commissioner whose term of office has been extended by sub-section (*5*) of section 52 shall be treated as an election to fill a casual vacancy.

On failure of election, Commissioners to be appointed by Government.

23. If the electorate in any municipality fails within the prescribed time to elect the number of Commissioners to be elected in accordance with the provisions of sections 15, 16 or 17, the Local Government may appoint Commissioners to complete that number. [*Cf.* Ben Act III of 1884, s. 16.]

Voting to be by secret ballot.

24. The manner of holding elections shall be prescribed by rules made under this Act, but when a poll is taken at any election of a Commissioner the voting at such election shall be by secret ballot to be conducted in the manner prescribed. [New; *cf* Ben. Act III of 1884, s. 15.]

Offences in respect of electoral list.

25. (*1*) Every person who by claiming a qualification which he knows that he does not possess to vote at a municipal election or by using false documents or by a false declaration or by any other deceitful means procures the improper entry of the name whether of himself or of any other person in the electoral roll, or the improper omission of any name therefrom shall be punished with imprisonment which may extend to three months or with fine or with both. [*Cf.* Mad Act V of 1920, s. 52.]

(*2*) Every municipal officer or servant or polling officer who wilfully makes or procures any improper entry in the electoral roll or any improper omission therefrom shall be punished with imprisonment which may extend to six months or with fine or with both.

Corrupt practices

26. (*1*) A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person— [*Cf.* U. P. Act II of 1916, s. 28.]

(*i*) induces or attempts to induce by fraud or coercion any voter to give or refrain from giving a vote in favour of any candidate;

(*ii*) threatens any candidate or voter, or any person in whom a candidate or voter is interested with injury of any kind; [*Cf.* Indian Penal Code, s. 171C.]

(*iii*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure;

(Chapter III.—The Municipal Authorities.— Clause 26.)

(*iv*) employs or instigates any form of social boycott of any voter or candidate or of anyone in whom such voter or candidate is interested; [New.]

(*v*) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any food or drink, or any money or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person, including a promise of spiritual salvation; [*Cf.* U. P. Act II of 1916, s. 28.]

(*vi*) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote;

(*vii*) makes any payment or promise of payment on account of the conveyance of any voter, other than himself, to or from any place for the purpose of recording a vote at an election; [*Cf.* Regulations for the nomination and election of Additional Members of the Legislative Council Regulation, XIV (2) (*iii*).]

(*viii*) lets, lends, employs, hires, borrows or uses for the purpose of conveying any voter to or from any place for the purpose of recording a vote any vehicle, horse or other animal which is kept or used by any person for the purpose of letting out on hire or conveying passengers for hire:

Provided that nothing in this clause shall apply to any such use by a voter of his own vehicle to convey himself, or prevent a conveyance being hired by an elector, or by several electors at their joint cost, for the purpose of conveying him or them to the poll; [*Cf.* O. M. Act, Sch. II, Part II, rule 4, proviso.]

(*ix*) offers any money or valuable consideration to any person to induce him to withdraw from being a candidate at an election, or, being a candidate accepts any money or valuable consideration so offered; [*Cf.* 46 and 47 Vict., c. 51, s. 15.]

(*x*) abets the doing of any of the acts specified in clauses (*i*) to (*ix*).

Explanations.—(*a*) A "promise of individual advantage or profit to a person" includes a promise for the benefit of the person himself, or of anyone in whom he is interested, but does not include a promise to further or oppose, or to vote for or against any particular municipal measure or work; [*Cf.* U. P. Act II of 1916, s. 28.]

(*b*) no agent, clerk, messenger or other person who may in accordance with rules made by the Local Government be employed for remuneration by a candidate at an election shall by reason of such employment alone be deemed to come within the provisions of this section. [*Cf.* Mad. Act V of 1920, s. 53, Explanation.]

(2) A corrupt practice shall be deemed to have been committed by a candidate if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election. [*Cf.* Bom. Act III of 1901, s. 22 (4).]

(Chapter III.—The Municipal Authorities.— Clauses 27-31.)

(3) Every person who is guilty of a corrupt practice at or in connection with an election held under the provisions of this Act shall be punished with imprisonment which may extend to six months or with fine or with both. [Cf. Mad Act V of 1920, ss. 53, 54.]

Fraudulent voting and personation.

27. (1) Every person who applies for a ballot paper at an election, having already voted once at the same election or knowing that he is not qualified to vote thereat, shall be punished with imprisonment which may extend to six months or with fine or with both. [Cf. Mad Act V of 1920, s. 55.]

(2) Every person who applies for a ballot paper in the name of any other person living or dead, or of a fictitious person, shall be punished with the same punishment.

Infringement of secrecy of election.

28. Every polling officer, clerk or other person in attendance at the polling station who, except for some purpose authorised by law, communicates to any person any information showing directly or indirectly for which candidate any voter has voted, and every person who by any improper means procures any such information, shall be punished with imprisonment which may extend to six months or with fine or with both. [Cf. Mad Act V of 1920, s. 56.]

Offences by polling officers.

29. Every polling officer who permits a person to vote knowing that such person is not entitled to vote, or who prevents a person from voting knowing that such person is entitled to vote, shall be punished with imprisonment which may extend to six months or with fine or with both. [Cf. Mad Act V of 1920, s. 57.]

Falsifying result of election.

30. Every person who in the course of electoral operations falsifies or attempts to falsify the record of an election by removing, destroying, altering or fabricating nomination papers or voting papers or by any other act or by any omission, shall be punished with imprisonment which may extend to one year or with fine or with both. [Cf. Mad. Act V of 1920, s. 58.]

Procedure before magistrate.

31. No magistrate other than a magistrate of the first class shall take cognizance of any offence punishable under sections 25 to 30 (both inclusive) nor shall any magistrate take cognizance of such offence,— [Cf. Mad. Act V of 1920, s. 59.]

(a) except on the complaint of a person whose name is on the electoral roll, and

(b) unless such complaint has been made within seven days of the date of the declaration of the result of any election to which the offence relates, or within seven days of the date on which the offence is alleged to have been committed, and

(c) unless the person complaining shall have deposited two hundred rupees.

An appeal shall lie to the District Judge from any conviction and sentence passed under sections 25 to 30 (both inclusive).

(Chapter III.—The Municipal Authorities.— Clauses 32-34.)

Order of disqualification.

32. Every person convicted of an offence punishable under sections 25 to 30 (both inclusive) shall be disqualified from voting or from being elected in any election to which this Act applies and from holding the office of Chairman, or Commissioner under this Act for such period, not being less than three years nor more than six years from the date of his conviction, as the Court may by order determine. [Cf. Mad Act V of 1920, s. 60.]

Proceedings to set aside an election.

33. If the validity of any election of a Commissioner is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, file a petition before the District Judge of the district within which the election has been or should have been held : [New, Ben. Act III of 1884, s. 15.]

Provided that the validity of such election shall not be questioned in any such petition—

(a) on the ground that the name of any person qualified to vote has been omitted from the electoral roll or rolls; or

(b) on the ground that the name of any person not qualified to vote has been inserted in the electoral roll or rolls; or

(c) on the ground of any non-compliance with this Act or any rule made under this Act, or of any mistake in the forms required thereby, or of any error, irregularity or of informality on the part of the officer or officers charged with carrying out this Act or rules made under this Act unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election.

Procedure and powers of Judge holding inquiry.

34. (1) Where a petition has been filed under section 33 the District Judge, or any Subordinate Judge specially empowered in this behalf by the Local Government to whom the District Judge may transfer the petition, may, after holding such inquiry in accordance with the prescribed procedure as he deems necessary, and subject to the provisions of sections 35 and 36 pass an order confirming or amending the declared result of the election or setting the election aside. [Cf. Bom. Act III of 1901, s. 22 (2); Ben. Act III of 1884, s. 15.]

(2) For the purposes of the said inquiry the said Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court, and may also direct by whom the whole or any part of the costs of such inquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908. V of 1908.

(3) The Judge may, at any stage of the proceedings, require the petitioner to deposit in Court the costs incurred or likely to be incurred by any respondent, or to give security or further security for the payment of the same, and if, within the time fixed by him, or

(*Chapter III.—The Municipal Authorities.— Clauses 35-40.*)

within such further time as he may allow, such costs are not deposited or such further security is not furnished, as the case may be, may dismiss the petition.

(*4*) The decision or order of the said Judge shall be final.

Declaration in case of corrupt practice by candidate.

35. The Judge, if he is satisfied that a candidate has committed any corrupt practice within the meaning of section 26 for the purpose of the election, or if he is satisfied that the election has not been a free election by reason of the general employment of bribery or undue influence, as defined in the Indian Election Offences and Inquiries Act, 1920, or by reason of any form of general intimidation, including any form of social boycott, shall set aside the election of such candidate, if he has been elected, and if the election is set aside for any cause which is the result of acts of a candidate or his agents may declare that candidate to be disqualified for the purpose of such fresh election as may be held under section 39.

[*Cf.* Bom. Act III of 1901, s. 22 (*3*); Ben Act III of 1884; s. 15.]

XXXIX 1920.

Scrutiny of votes and declaration in other cases.

36. If, in any case to which section 35 does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall, after a scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:

[*Cf.* Bom. Act III of 1901, s. 22 (*3*) (*b*); Ben Act III of 1884, s. 15.]

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

Disqualification of candidates for corrupt practice.

37. If the Judge sets aside an election under section 35, he may, if he thinks fit, declare any person by whom a corrupt practice has in his opinion been committed within the meaning of section 26 to be disqualified from being a candidate in that or any other municipality for a period not exceeding six years, and the Judge's decision shall be final:

[*Cf.* Bom. Act III of 1901, s. 22 (*6*); Ben. Act III of 1884, s. 15.]

Provided, however, that such person may, by an order of the Local Government, be at any time relieved from such disqualification.

Saving of acts done by a Commissioner before his election is set aside.

38. Where a candidate, who has been elected to be a Commissioner, is declared by the Judge not to have been duly elected, acts done by him in execution of the office before the time when the decision is certified to the Commissioners shall not be invalidated by reason of that declaration.

[New; *cf.* Ben Act III of 1884, s. 15.]

Fresh election when election set aside.

39. If an election is set aside by the Judge, a date shall forthwith be fixed and the necessary steps taken for holding a fresh election for filling up the vacancy, as though it had been a casual vacancy.

[New; *cf.* Ben. Act III of 1884, s. 15.]

Bar to interference by courts in election matters.

40. No election of a Commissioner shall be called in question in any Court except under the procedure provided by this Act, and no order passed in any proceeding under sections 33 to 37 (both inclusive),

[New; *cf.* Ben. Act III of 1884, s. 15.]

Chapter III.—The Municipal Authorities.—Clauses 41, 42.)

shall be called in question in any Court and no Court shall grant an injunction—

(*i*) to postpone an election of a Commissioner, or

(*ii*) to prohibit a person, declared to have been duly elected under this Act, from taking part in the proceedings of a municipality of which he has been elected a Commissioner, or

(*iii*) to prohibit the Commissioners formally elected or appointed for a municipality from entering upon their duties.

Rules.

41. For the purpose of election of Commissioners the Local Government may, with respect to municipalities generally or to any municipality or class of municipalities, make such rules, as they may think fit, to regulate and determine— [*Cf.* B. & O. Act VII of 1922, s. 19; Ben. Act III of 1884, s. 15.]

(*a*) the number of Commissioners to be elected for each ward in a municipality; and the alteration of—

(*i*) the boundaries of, and

(*ii*) the number of Commissioners apportioned to,

any ward of a municipality;

(*b*) the preparation, publication and revision of the electoral roll or rolls, the registration of voters and the nomination and registration of candidates;

(*c*) with reference to sub-clauses (*a*) and (*c*) of clause (*iii*) of sub-section (*2*) of section 21 the minimum sums entitling a person to vote;

(*d*) the representation of companies, bodies corporate, firms, joint families or other associations of individuals under sub-section (*3*) of section 21;

(*e*) the special representation, among elected Commissioners of any classes of the community under sub-section (*2*) of section 18; [*Cf.* U. P. Act, s. 11 (*1*).]

(*f*) the dates, time and manner of holding elections, including the manner of giving and recording votes;

(*g*) the procedure to be followed by a Judge in inquiring into election petitions;

(*h*) the employment of agents, clerks, messengers or other persons by a candidate for the purposes of an election; and

(*i*) any other matter relating to elections or election petitions in respect of which this Act makes no provision or, in the opinion of the Local Government, insufficient provision.

Election of Chairman.

42. (*1*) The Commissioners of every municipality shall, at a meeting to be held within fourteen days from the date of the publication in the *Calcutta Gazette* of the result of a general election of Commissioners in the municipalities, or of the names of the persons [*Cf.* B. & O. Act, VII of 1922, s. 20; Ben. Act III of 1884, s. 23.]

(Chapter III.—The Municipal Authorities.—Clauses 43, 44.)

appointed to be Commissioners, whichever publication may be later, elect by name in the prescribed manner one of their number to be Chairman.

(2) In the case of a vacancy in the office of Chairman other than a vacancy occurring under the provisions of section 55, the Commissioners shall, at a meeting to be held within fourteen days from the date of the occurrence of the vacancy, elect by name in the prescribed manner one of their number to fill the vacancy.

(3) The election of a Chairman by the Commissioners shall be subject to the approval of the Local Government. [Cf. Ben. Act III of 1884, s. 59 (a).]

(4) If the Local Government disapprove of any election by the Commissioners of a Chairman, they may order the Commissioners to elect within a period to be fixed in the order another person from among their number to be Chairman.

(5) The Chairman when elected shall hold office as such pending the orders of the Local Government under sub-section (3) or sub-section (4), as the case may be, but, if the election is not approved by the Local Government, he shall be deemed to have vacated his office from the date of receipt by the Commissioners of the order of the Local Government made under sub-section (4).

(6) The meeting to be held under sub-section (1) shall be convened by the Chairman of the out-going body of Commissioners, or in the case of a newly created and constituted municipality by the Magistrate, and if not so convened within five days from the date referred to in sub-section (1) may be convened by requisition of any three of the Commissioners. Three clear days' notice shall be given of the meeting.

(7) The meeting to be held under sub-section (2) shall be convened by the Vice-Chairman and in default of such convention there shall be a like right of convention thereof by three Commissioners and a like period of notice to that provided by sub-section (6).

Appointment of Chairman on failure to elect or on request of Commissioners.

43. If within the period of fourteen days fixed by sub-section (1) or sub section (2) of section 42 or within the period fixed by an order under sub-section (4) of that section the Commissioners fail to elect a Chairman, or, notwithstanding anything contained in section 42, if when a vacancy occurs, at a meeting attended by not less than two-thirds of the Commissioners, they request the Local Government to appoint a Chairman, the Local Government shall appoint a Chairman by name. [Cf. Ben. Act III of 1884, s. 28 (2).]

Status of appointed Chairman.

44. Notwithstanding anything contained in section 14 every Chairman appointed under this Act, if not already a Commissioner of the municipality of which he has been appointed Chairman, shall, from the date of his appointment, during the term of his office, enjoy all the rights and privileges, and be subject to all the liabilities and disabilities of a Commissioner of the municipality to which such appointment relates, but shall not be reckoned in calculating the proportions of one-fourth and one-fifth under the provisions of sections 15 and 16. [Cf. Ben. Act III of 1884, s. 24.]

(*Chapter III.—The Municipal Authorities.—Clauses 45—51.*)

Election of Vice-Chairman.

45. The Commissioners at a meeting shall elect by name in the prescribed manner one of their own number to be Vice-Chairman. [*Cf.* Ben. Act III of 1884, s. 26.]

Dispute as to election of Chairman or Vice-Chairman.

46. If any dispute arises as to the election of a Chairman or Vice-Chairman, the matter shall be referred to the Local Government, whose decision shall be final.

Publication of elections and of nominations.

47. The names of all persons elected or appointed as Chairman, Vice-Chairman or Commissioners shall be published in the *Calcutta Gazette*. [*Cf.* Mad. Act V of 1920, s. 27.]

Powers of Chairman.

48. The Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order authorised thereby, exercise all the powers vested by this Act in the Commissioners, and where by any other law power is vested in the Commissioners for any purpose, the Chairman may transact any business or make any order authorised by that law in the exercise of that power, unless it is otherwise expressly provided in that law: [*Cf.* Ben. Act III of 1884, s. 41.]

Provided that the Chairman shall not act in opposition to, or in contravention of, any order of the Commissioners at a meeting or exercise any power which is directed to be exercised by the Commissioners at a meeting.

Delegation of duties or powers to Vice-Chairman or certain officers.

49. The Commissioners at a meeting specially convened for the purpose and subject to the approval of the Local Government, or the Chairman with the approval of the Commissioners at a meeting, may delegate to the Vice-Chairman or to the holder of any of the other offices, referred to in sub-section (*1*) of section 68, all or any of the duties or powers of a Chairman as defined in this Act, and may at any time in the like manner withdraw or modify the same: [*Cf.* B. & O. Act VII of 1922, s. 26 Ben. Act III of 1884, s. 45.]

Provided that nothing done by the Vice-Chairman which might have been done under the authority of a delegation from the Chairman shall be invalid for want of or defect in such delegation if it be done with the express or implied consent of the Chairman and subsequently approved by the Commissioners at a meeting.

Duties of Vice-Chairman.

50. A Vice-Chairman— [*Cf.* U. P. Act II of 1916, s. 55.]

(*a*) shall, during a vacancy in the office of Chairman or the incapacity or temporary absence of the Chairman, perform any duty and, when occasion arises, exercise any power of the Chairman,

(*b*) shall, at any time, perform any duty and exercise, when occasion arises, any power delegated to him by the Chairman under section 49.

Grant of leave to Chairman and Vice-Chairman.

51. (*1*) The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year. [*Cf.* Ben. Act III of 1884, s. 26B.]

(*2*) If the Chairman or Vice-Chairman is absent from his duties during any one year for more than the three months allowable by way of leave under this section, he shall be declared by the Local Government to have vacated his office unless such absence is condoned by the Local Government.

(*Chapter III.—The Municipal Authorities.— Clauses 52-53.*)

Tenure of office of Chairman, Vice-Chairman and Commissioners.

52. (*1*) Except as otherwise provided in this Act,— [*Cf.* Ben. Act III of 1884, ss. 14 and 21.]

(*a*) a Commissioner, whether elected or appointed, shall hold office for three years commencing from the date of the first meeting of the newly-formed body of Commissioners after a general election of Commissioners in the municipality at which a quorum is present.

(*b*) a Chairman, whether elected or appointed, and a Vice-Chairman shall, subject to the provisions of section 55, hold office for three years from the date of his appointment or election, as the case may be, or if a Commissioner for the residue of the period during which he holds office as a Commissioner, whichever may be less. [*Cf.* Ben. Act III of 1884, ss. 24 and 25.]

(*2*) The abovementioned term of three years shall be held to include any period which may elapse between the expiry of the said three years and the date of the first meeting of the newly-formed body of Commissioners at which a quorum is present. [*Cf.* Ben. Act III of 1884, s 26.]

(*3*) A person ceasing to be a Commissioner or to be Chairman or Vice-Chairman by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-appointment. [*Cf.* Ben. Act III of 1884, s. 25.]

(*4*) If the Local Government in the exercise of their powers under clause (*h*) of sub-section (*1*) of section 6 increase the number of Commissioners of any municipality at any time before the expiry of the term of three years, provided by clause (*a*) of sub-section (*1*), the term of office of the Commissioners thus added shall not extend beyond the said term of three years as above defined.

(*5*) The Local Government may extend the term of office of a Commissioner or of the Commissioners of a municipality for a period not exceeding one year beyond the term of three years, provided by clause (*a*) of sub-section (*1*), if in special circumstances (to be specified in the notification) they so think fit.

Oath of allegiance to be taken by Commissioners.

53. (*1*) Notwithstanding anything contained in the Indian Oaths Act, 1873, every person who is elected or appointed to be a Commissioner shall before taking his seat make, at a meeting of the Commissioners, an oath or affirmation of his allegiance to the Crown in the following form, namely:— [*Cf.* C. M. Act, s. 38.] X of 1873.]

"I, A. B., having been $\frac{\text{elected}}{\text{appointed}}$ a Commissioner of this municipality, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, His heirs and successors, and that I will faithfully discharge the duties upon which I am about to enter."

(*2*) Any person who having been elected or appointed a Commissioner fails to make, within three months of the date on which his term of office

(*Chapter III.—The Municipal Authorities.—Clauses 54-55.*)

commences, the oath or affirmation laid down in sub-section (*1*) shall cease to hold his office and his seat shall be deemed to have become vacant.

(*3*) Notwithstanding anything contained in the Indian Oaths Act, 1873, every elected or appointed Commissioner of a municipality holding office at the commencement of this Act shall, at the first meeting of the Commissioners which he attends after the commencement of this Act, make an oath or affirmation of his allegiance to the Crown in the following form, namely :— X of 1873

"I, A. B., a Commissioner of this municipality, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, His heirs and successors, and that I will faithfully discharge the duties of a Commissioner of this municipality."

(*4*) Any elected or appointed Commissioner holding office at the commencement of this Act who fails to make, within three months from the commencement of this Act, the oath or affirmation laid down in sub-section (*3*) shall cease to hold his office and his seat shall be deemed to have become vacant.

Explanation.—A person who by constitutional means endeavours to make changes in the constitution shall not be deemed to have thereby violated his oath of allegiance.

Filling of vacancies and tenure of office of person filling vacancy.

54. If the election of any Commissioner is declared void under the provisions of section 35 or section 36 or if any Commissioner, Chairman or Vice-Chairman is, by reason of his death, resignation or removal or by reason of his seat becoming vacant under the provisions of section 51 or section 53, unable to complete his full term of office, or if a Chairman or Vice-Chairman avails himself of leave granted under section 51, the vacancy caused by such death, resignation or removal, or absence on leave, shall be filled by the appointment or election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be. [*Cf.* Ben. Act III of 1884, s. 27.]

Vacation of office by Chairman and Vice-Chairman after election.

55. (*1*) Notwithstanding anything contained in section 52, the Chairman and the Vice-Chairman of a municipality shall be deemed to have vacated office as soon as the Commissioners have assembled at the meeting held under the provisions of sub-section (*1*) of section 42. [New; *cf.* Ben. Act III s. 26A.]

(*2*) The Commissioners assembled shall thereupon appoint one of their number to preside at the meeting and shall proceed—

(*a*) to elect, or to request the Local Government to appoint, a Chairman, and

(*b*) to elect a Vice-Chairman :

Provided that if the Commissioners at the meeting decide to request the Local Government to appoint a Chairman, the Chairman shall thereafter resume his office and continue to hold the same until the new Chairman is appointed.

(Chapter III.—The Municipal Authorities.—Clauses 56—58.)

Resignation of Chairman, Vice-Chairman or Commissioner.

56. (*1*) An appointed Chairman of a municipality may resign by notifying in writing his intention to do so to the Commissioner of the Division, and on such resignation being accepted shall be deemed to have vacated his office. [*Cf.* Ben. Act III of 1884, s. 27A.]

(*2*) An elected Chairman may resign by laying notice in writing of his intention to do so before the Commissioners at a meeting.

(*3*) A Vice-Chairman or a Commissioner may resign by notifying his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting.

(*4*) On a resignation under sub-section (*2*) or sub-section (*3*) being accepted by the Commissioners at a meeting, the Chairman, Vice-Chairman or Commissioner, as the case may be, shall be deemed to have vacated his office.

Removal of Chairman and Vice-Chairman.

57. (*1*) The Local Government may at any time remove a Chairman appointed by them. [*Cf.* Ben. Act III of 1884, ss. 23 (*3*), 21, 25 and 59.]

(*2*) An elected Chairman and a Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose:

Provided that a resolution passed under this section for the removal of a Chairman from office shall be subject to the approval of the Local Government. [*Cf.* Ben. Act III of 1884, s. 59 (*b*).]

Removal of Commissioners.

58. (*1*) The Local Government may, if they think fit, on the recommendation of the Commissioners at a meeting, remove any Commissioner, if such Commissioner shall have been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct. [*Cf.* Ben. Act III of 1884, ss. 19 and 20.]

(*2*) The Local Government may remove any Commissioner—

(*a*) if he refuses to act or becomes incapable of acting, or is declared insolvent, or, if after his election or appointment as Commissioner, he is convicted of any such offence or is subjected by a Criminal Court to any such order, as in the opinion of the Local Government, formed after due inquiry, unfits him to be a Commissioner; or

(*b*) if he has been declared by the Local Government by notification (issued after due inquiry in which the Commissioner concerned shall have the right to be heard) to have violated his oath of allegiance; or [*Cf.* C. M. Act, s. 41(*b*).]

(*c*) if he absents himself from six consecutive meetings of the Commissioners without having previously obtained permission from the Commissioners at a meeting; or

(*d*) if he, being a legal practitioner without the consent of the Chairman, acts or appears in any suit or other proceeding, on behalf of any other person, against the Commissioners, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Commissioners; or [*Cf.* U. P. Act II of 1916, s. 40 (*1*) (*f*).]

(Chapter III.—The Municipal Authorities.—Clauses 59-60.)

(*e*) if he otherwise than with the permission in writing of the Commissioner of the Division, knowingly acquires or continues to have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Commissioners or holds any office of profit under the Commissioners except as specially provided in sections 60 and 99. If he contravenes this clause he shall also be liable to be punished as provided in section 485. [*Cf.* Ben. Act III of 1884, s. 57.]

(*3*) All acts and proceedings of any Commissioner removed under sub-section (*1*) or sub-section (*2*) shall, if done previously to such removal, be valid and effectual to all intents and purposes.

(*4*) Notwithstanding anything contained in clause (*e*) of sub-section (*2*) no person shall be deemed to be disqualified thereunder by reason only—

(*a*) of his having a share or interest in—

(*i*) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or share-holder; or

(*ii*) any lease, or purchase of land, or any agreement for the same; or

(*iii*) any agreement for the loan of money, or any security for the payment of money only; or

(*iv*) any newspapers in which any advertisement relating to the affairs of the municipality is inserted;

(*b*) of his being professionally engaged on behalf of the Commissioners as a legal practitioner and receiving a fee for services rendered in his professional capacity:

Provided that no such Commissioner shall act as a Commissioner or member of a committee, or take part in any proceedings relating to any matter in which he has a share or interest as described in clause (*a*) of this sub-section.

Effect of removal of a Commissioner.

59. (*1*) A Commissioner who has been removed from his office under sub-section (*1*) or under clause (*a*) or clause (*b*) of sub-section (*2*) of section 58 shall not be eligible for election or re-election as a Commissioner, without the consent of the Local Government. [*Cf.* Ben Act III of 1884, s. 22.]

(*2*) A Commissioner who has been removed from his office in any municipality under clauses (*c*), (*d*) or (*e*) of sub-section (*2*) of section 58 shall not be elected or re-elected a Commissioner of that municipality within the period of three years from the date of his removal. [New.]

(*3*) A Chairman in respect of whom a final order has been made under section 58 removing him from the municipality as Commissioner, shall thereupon cease to be Chairman.

Salary of Chairman and Vice-Chairman.

60. (*1*) With the sanction of the Local Government the Commissioners of any municipality may pay out of the Municipal Fund, a salary of such amount as the Local Government may approve to the Chairman and Vice-Chairman of such municipality. [*Cf.* Ben. Act III of 1884, ss. 28 and 59.]

(Chapter III.—The Municipal Authorities—Clauses 61—63.)

(2) In the case of a salaried Chairman or Vice-Chairman, the Commissioners may grant such leave allowances as they may from time to time approve at a meeting:

Provided that the allowance so granted, together with the acting allowance, if any, of the officiating incumbent shall not exceed the salary fixed for the office.

Power of Local Government to make rules.

61. The Local Government may make rules prescribing the manner of holding the election of the Chairman and Vice-Chairman.

Establishment.

Appointment of subordinate officers.

62. (1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder, from time to time determine what officers in addition to the Chairman and Vice-Chairman and what servants of the Commissioners are necessary for the municipality, and may fix the salaries and allowances to be paid and granted to such officers and servants. [*Cf.* Ben. Act III of 1884, s. 46.]

(2) Subject to the scale of establishment approved by the Commissioners under sub-section (1), the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their place:

Provided as follows:—

(i) a person shall not be appointed to an office carrying a monthly salary of fifty rupees or more without the sanction of the Commissioners at a meeting, and an officer, or servant whose post carries a monthly salary of more than twenty rupees shall not be dismissed without such sanction;

(ii) no appointment carrying a salary of two hundred rupees per mensem or upwards shall be created without the sanction of the Local Government, and every nomination to, and dismissal from, any such appointment shall be subject to confirmation by the Local Government. [*Cf.* Ben. Act III of 1884, s. 61.]

Appointment of Secretary or Sanitary Officers on requisition by Government.

63. (1) Notwithstanding anything contained in section 62 the Local Government may, if they think necessary, require the Commissioners of any municipality or class of municipalities— [*Cf.* Ben. Act III of 1884, ss. 349D, 349E and 349F.]

(i) to appoint at a meeting—

(a) a Secretary,

(b) an Engineer,

(c) a Health Officer and one or more Sanitary Inspectors, or one or more Sanitary Inspectors.

(2) An officer appointed under sub-section (1) shall be of such class or possess such qualifications as may be prescribed, and shall be paid out of the Municipal Fund such salary and allowances, if any, as the Local Government may fix.

(Chapter III.—The Municipal Authorities.—Clause 64.)

(*3*) Except as is provided in sub-section (*3*) of section 68, no Engineer, Health Officer or Sanitary Inspector shall be removed from office or otherwise punished in any way by the Commissioners except with the consent of the Local Government. Such consent however shall not be withheld if the removal or punishment is recommended by a resolution of the Commissioners passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the total number of Commissioners of the municipality. [*Cf.* Mad. Act V of 1920, s 71 (4).]

(*4*) The provisions of sub-section (*1*) shall not, unless the Local Government for reasons to be recorded in writing so direct, apply to any municipality, the income of which falls below ten thousand rupees a year.

Power to frame rules for pensions and gratuities or for the creation of a provident or annuity fund.

64. (*1*) The Commissioners, at a meeting specially convened for the purpose, by a resolution in favour of which not less than two-thirds of the Commissioners present and voting at such meeting shall have voted, may, subject to the approval of the Local Government, make rules— [*Cf.* Ben. Act III of 1884, ss. 47 and (*d*).]

(*a*) for the granting of pensions, gratuities and bonuses out of the Municipal Fund;

(*b*) for the granting of compassionate allowances and gratuities to members of the families of deceased municipal officers and servants; and

(*c*) for the creation and management of a provident or annuity fund (which may be combined with a system of bonuses based on length of service), for compelling contributions to such provident fund on the part of their officers and servants, and for supplementing such contributions out of the Municipal Fund.

(*2*) The Commissioners at a meeting may, from time to time, in accordance with such rules—

(*i*) grant pensions or bonuses or both or grant allowances or annuities out of such provident or annuity fund to any of their officers or servants, as they may see fit;

(*ii*) grant a gratuity based on the length of service of the deceased to any member of the family of any of their officers or servants who die while in the service of the Commissioners;

(*iii*) by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting have voted,—

(*a*) grant a special pension or gratuity or both to any member of the family of any of their officers or servants who has died from disease or injury contracted in the discharge of a duty which was attended with extraordinary bodily risk, and

(*b*) in addition to other benefits grant a bonus to any officer or servant in recognition of work or service of exceptional merit.

(Chapter III.—The Municipal Authorities.—Clauses 65—68.)

(*3*) For the purposes of this chapter the family of a municipal officer or servant shall be deemed to include his wife, his children, and his father, mother, brother or sister dependent upon him for support. [*Cf.* C. M. Act, s. 57 (2).]

Contributions in case of Government servants employed by the Commissioners.

65. (*1*) The Commissioners shall contribute to the pension, gratuities and allowances of any servant whose services are lent or transferred by Government to the Commissioners. [*Cf.* U. P. Act II of 1916, s. 78; and Ben. Act III of 1884, s. 48.]

(*2*) Such contribution shall be to the extent prescribed by the rules of the Government Civil Pension and Leave Codes.

Notice to be given by *mehters* of intention to withdraw from service.

66. (*1*) A *mehter* or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall not withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw. [*Cf.* Ben. Act III of 1884, s. 188.]

(*2*) Any *mehter* or other such person who withdraws from his duties without giving such notice as aforesaid shall be liable to rigorous imprisonment for a term not exceeding one month, and shall forfeit all salary which may be due to him.

(*3*) The Local Government may direct that on and from a specified future date the provisions of subsections (*1*) and (*2*) shall apply also to any other specified class of servants of the Commissioners whose functions intimately concern the public health or safety. [*Cf.* U. P. Act II of 1916, s. 85 (2).]

Prohibition of having share or interest in contract or employment with Commissioners

67. (*1*) No person shall be eligible for employment as a municipal officer or servant if he has, directly or indirectly, by himself or his partner or employer or employee, any share or interest in any contract or employment with, by, or on behalf of the municipality. [*Cf.* C. M. Act, s. 53.]

(*2*) If any municipal officer or servant acquires, directly or indirectly as aforesaid, any such share or interest otherwise than as such officer or servant he shall cease to be a municipal officer or servant and his office shall become vacant.

(*3*) Nothing in the sub-sections (*1*) and (*2*) shall apply to any such share or interest as under subsection (*4*) of section 58 it is permissible for a Commissioner to have without being thereby disqualified to be a Commissioner.

Indebtedness.

68. (*1*) A person shall not be eligible for the office of Chairman, Vice-Chairman, Secretary, Engineer, Health Officer, Sanitary Inspector, Assessor, Tax-Collector, Accountant, or Overseer of a municipality if he is seriously indebted to any person. [*Cf.* C. M. Act, s. 54.]

(*2*) If any question arises as to whether any person is "seriously indebted" within the meaning of subsection (*1*), it shall be decided—

(*a*) in the case of a candidate for the office of Chairman or Vice-Chairman or for any office mentioned in sub-section (*1*), carrying a salary of one hundred rupees a month or upwards—by the Local Government, and

(Chapter III.—The Municipal Authorities.— Clauses 69—71.)

(*b*) in the case of a candidate for any other office mentioned in sub-section (*1*)—by the authority which makes appointments to such office.

(*3*) If any person holding any of the offices mentioned in sub-section (*1*) is found, by the authorities respectively referred to in sub-section (*2*), to be seriously indebted to any person, he may be removed from his office—

(*i*) if he holds the office of Chairman or Vice-Chairman—by the Local Government, or

(*ii*) if he holds any other office—by the authority which appointed him.

Power to Commissioners to make rules.

69. The Commissioners at a meeting may, subject to the sanction of the Local Government, make rules as to— [*Cf.* C. M. Act, s. 56; Ben. Act III of 1884, ss. 49 and 351A (*l*).]

(*i*) the duties, appointment, leave, fining, suspension and removal of officers and servants of the Commissioners;

(*ii*) the nature and amount of security to be furnished by different classes of officers or servants of the Commissioners for the proper discharge of their duties.

Power of Local Government to make rules

70. The Local Government may make rules—

(*a*) prescribing the qualifications of candidates for employment by the Commissioners, and declaring what circumstances shall be a disqualification for continuance of such employment; [*Cf.* Assam Act I of 1915, s. 89 (2) (*ix*).]

(*b*) prescribing the proportion of the pay and allowances of Government officers employed by the Commissioners which shall be borne by the Commissioners, and providing for the control of such officers; [*Cf.* Assam Act I of 1915, s. 89 (2) (*xv*).]

(*c*) prescribing the division of Health Officers and Sanitary Inspectors into classes or grades according to their qualifications; and [*Cf.* Ben. Act III of 1884, s. 349F.]

(*d*) regulating any other matter relating to candidates for employment by the Commissioners in respect of which this Act makes no provision or insufficient provision, and for which provision is, in the opinion of the Local Government, necessary.

Conduct of Business.

Ordinary meetings.

71. (*1*) The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman. [*Cf.* Ben. Act III of 1884, s. 88.]

(*2*) If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

(*Chapter III.—The Municipal Authorities. Clauses 72—77.*)

Meeting on requisition by Commissioners.

72. (*1*) The Chairman, or, in his absence, the Vice-Chairman, shall call a special meeting on a requisition signed by not less than three of the Commissioners. [*Cf.* Ben. Act III of 1884, s. 39.]

(*2*) If the Chairman or the Vice-Chairman fails to call a special meeting within thirty days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.

Person to preside at meetings.

73. The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting, and, in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside. [*Cf.* Ben. Act III of 1884, s. 40.]

Decision of questions and casting vote.

74. (*1*) All questions which may come before the Commissioners at a meeting shall be decided by a majority of votes, unless otherwise provided in this Act. [*Cf.* Ben. Act III of 1884, s. 41.]

(*2*) In case of equality of votes, the person presiding shall have a second or casting vote.

Commissioners disqualified from voting on certain questions.

75. No Commissioner or member of a standing or other Committee shall vote on any matter affecting his own conduct, or pecuniary interest or on any question which regards exclusively the assessment of himself or the valuation of any property in respect of which he is in any way directly interested or of any property of or for which he is manager or agent or his liability to any tax, rate, toll or fee. [*Cf.* Ben. Act III of 1884, s. 58.]

Quorum and adjournment for want thereof.

76. (*1*) No business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman, or, under section 42 or section 72, by persons signing a requisition, or under section 42 by the Magistrate, nor except for the election of a person to preside for the purposes of sub-section (*3*) unless a quorum shall be present. [*Cf.* Ben. Act III of 1884, s. 42.]

(*2*) A quorum shall be, in any municipality in which the Commissioners are more than fifteen, five;

in any other municipality, a number being not less than one-third of the entire number of Commissioners.

(*3*) If, at the time appointed for a meeting, or within half an hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the person presiding, and three days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

77. (*1*) Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose, and shall be signed by the person presiding over the meeting, and such book shall be open to the inspection of the tax-payers on payment of a such fee, not exceeding eight annas, as the Commissioners at a meetting may, from time to time, impose. [*Cf.* Act II 1884, ss. 60.]

(*2*) A copy of the minutes of the proceedings of all meetings of the Commissioners shall be forthwith forwarded by the Chairman to the District Magistrate.

(*Chapter III.—The Municipal Authorities.—Clauses 78—80.*)

Standing Committees.

Formation of standing committees.

78. (*1*) The Commissioners at a meeting may, from time to time, from among their number appoint standing committees and, by specific resolution, delegate to, or withdraw from such committees any of their functions, powers and duties and may also from time to time, by like resolution refer to them for inquiry and report, or for opinion such subjects relating to the powers or duties of the Commissioners, as the Commissioners at a meeting may think fit. [Cf. C. M. Act, s. 71.]

(*2*) Each such committee shall perform the duties assigned to it by this Act or the rules made thereunder, and may exercise the powers delegated to it, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such powers.

(*3*) All the proceedings of any such committee shall be subject to confirmation or modification by the Commissioners at a meeting, unless in special cases the Commissioners at a meeting otherwise direct.

(*4*) All questions regarding the removal or resignation of members of a committee shall be settled by the Commissioners at a meeting. [Cf. Ben. Act III of 1884, s. 65.]

Joint Committees.

Formation of joint committees.

79. (*1*) Subject to the prescribed restrictions the Commissioners of any municipality may join with the Commissioners of any other municipality or any other local authority in constituting out of their respective bodies a joint committee, for any purpose in which they are jointly interested, and in delegating to any such joint committee any power which might be exercised by the Commissioners or any of the local authorities concerned. [Cf. Ben. Act III of 1884, s. 37A.]

(*2*) Such joint committee may, from time to time, make rules as to its proceedings, and as to the conduct of correspondence relating to the purpose for which it is constituted.

Decision of disputes between local authorities.

80. (*1*) If a dispute arises between the Commissioners of a municipality and the Commissioners of another municipality or between the Commissioners and any other local authority on any matter in which they are jointly interested, such dispute shall be referred to the Local Government whose decision shall be final. [Cf. U. P. Act II of 1916, s. 325.]

(*2*) If such dispute arises between the Commissioners of two municipalities, who have for any purpose constituted or who may, for the specific purpose of settling the dispute, constitute a joint committee under the provisions of section 79 such joint committee shall, in the first instance, inquire into the said dispute and after taking such evidence, and calling for such papers as it may think fit, shall deliver a written award on the matters in dispute, which shall be binding on the Commissioners of both municipalities, provided that the Commissioners of either of the said municipalities may appeal against such decision to the Local Government, whose orders shall be final.

(*Chapter III.—The Municipal Authorities.—Clauses 81—83.*)

(*3*) The Local Government may regulate by rules the relations to be observed between municipalities and other local authorities in any matter in which they are jointly interested.

Special Committees.

Formation of special committees.

81. (*1*) The Commissioners at a meeting may, from time to time, by specific resolution, appoint a special committee to inquire into and report upon any matter (to be specified in such resolution) which may arise in connection with any of the powers, functions or duties of the Commissioners and which is not at the time under consideration by a standing committee constituted under section 78. [*Cf.* C. M. Act, s. 75.]

(*2*) The provisions of sub-sections (*2*), (*3*) and (*4*) of section 78 shall be deemed to apply to every such special committee, which shall confine its inquiry to the matter specified in the resolution whereby it was constituted.

Appointment of persons other than Commissioners as members of committees.

82. Notwithstanding anything contained in this Act, the Commissioners at a meeting may associate with any committee appointed under section 81 for such period as they may think fit any person of either sex who is not a Commissioner, but who may, in the opinion of the Commissioners, possess special qualifications for serving on such committee and such persons shall have a right to vote at meetings of the special committee, and shall be deemed to be members thereof for all purposes for such period : [*Cf.* Bom. Act III of 1901, s. 31. C. M. Act, s. 75.]

Provided that the number of persons so appointed on any committee shall not exceed one-third of the total number of the members of such committee.

Rules of Business.

Power to make rules as to business of Commissioners and committees.

83. The Commissioners at a meeting may, subject to the sanction of the Local Government, make rules as to— [*Cf.* Ben. Act III of 1884, s. 351A.]

(*a*) the time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given ;

(*b*) the conduct and control of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings ; [New.]

(*c*) the custody of the common seal ;

(*d*) the division of duties among the Commissioners and the powers to be exercised by members to whom particular duties are assigned ;

(*e*) the manner of appointment and the constitution of committees, and the regulation and conduct of their business ; and

(*f*) the delegation of powers or duties to committees or to the Chairman of a committee. [New.]

(Chapter III.—The Municipal Authorities.— Clauses 84-85.)

Validation of acts and proceedings.

84. (*1*) No act done or proceeding taken under this Act shall be questioned on the ground merely of— [*Cf.* C. M. Act, s. 79. ; Ben. Act III of 1884, s. 13]

(*a*) the existence of any vacancy in or any defect in the constitution of, the municipality or any standing, joint or special committee or any disqualification in less than half of the Commissioners or members of the committee present when the act or proceeding was done or taken ;

(*b*) any Commissioner having voted or taken part in any proceeding in contravention of the proviso to section 58 ; or

(*c*) any defect or irregularity not affecting the merits of the case.

(*2*) Every meeting of the Commissioners, or of any standing, joint or special committee, the minutes of the proceedings of which have been duly signed by the person presiding over the meeting, shall be deemed to have been duly convened and to be free from all defects and irregularity and the accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of the meeting. [*Cf.* Ben. Act III of 1884, s. 38.]

Administration Report.

Annual administration report.

85. (*1*) As soon as may be after the first day of April in every year and not later than such date as may be fixed by the Local Government, the Commissioners shall submit to the Local Government through the District Magistrate a report on the administration of the municipality during the preceding year in such form and with such details as the Local Government may direct. If the District Magistrate makes any remarks on the report, such remarks shall be forwarded to the Commissioners and they shall be entitled, within such time as the Local Government fix, to offer or make at a meeting such explanations or observations as they think fit. [*Cf.* Mad. Act V of 1920, s. 35.]

(*2*) The Chairman shall prepare the report, and the Commissioners at a meeting shall consider it and forward it to the Local Government with their resolutions thereon, if any.

(*3*) The report shall be published in such manner as the Commissioners at a meeting subject to the approval of the Local Government may direct.

CHAPTER IV.

Municipal Property and Finance.

I.—PROPERTY, CONTRACTS AND LIABILITIES.

Municipal property.

Municipal property.

86. *(1)* All property within the municipality of the nature hereinafter in this section specified, other than property maintained by Government or another local authority, shall vest in and belong to the Commissioners, and shall, with all other property of whatsoever nature or kind which may become vested in the Commissioners, be under their direction, management and control, that is to say— [*Cf.* Ben. Act III of 1884, s. 30; Pun. Act III of 1911, s. 52, and C. P. Act XVI of 1903, s. 51.]

(*a*) all public streets, including the soil, the pavements, stones and other materials thereof and all drains, bridges, culverts, trees, erections, materials, implements and other things provided for such streets ;

(*b*) all public channels, watercourses, springs, tanks, *ghats*, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps, and other water-works, whether made, laid or erected at the cost of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials and things connected therewith, or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank : [*Cf.* Ben. Act III of 1884, ss. 198 and 306.]

Provided that water-pipes and any water-works connected therewith or appertaining thereto which with the consent of the Commissioners are laid or set up in any street by the owners of any mill, factory, dockyard, workshop or the like primarily for the use of their employees shall not be deemed to be public water-works by reason of their use by the public;

(*c*) all public sewers and drains, and all works, materials and things appertaining thereto and other conservancy works [*Cf.* Ben. Act III of 1884, s. 197.]

Provided that for the purpose of enlarging, deepening or otherwise repairing or maintaining any such sewer or drain the subsoil appertaining thereto shall also be deemed to vest in the Commissoners:

Provided also that where any installation or work for the treatment or disposal of sewage is constructed by the owners of any mill, factory, dockyard, work-shop or the like primarily for the use of their employees, the laying of sewers and other things appertaining thereto in a street, with the consent of the Commissioners, shall not by virtue of this clause or by reason of their use by the public cause such installation or sewers or works appertaining thereto to vest in the Commissioners;

(*d*) all sewage, rubbish and offensive matter collected by the Commissioners from streets, latrines, urinals, sewers, cesspools, and other places; [*Cf.* Ben. Act III of 1884, s. 196.]

(*e*) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto ; and

(*Chapter IV.—Municipal property and finance.—Clauses 87-88.*)

(*f*) all buildings erected by the Commissioners and all lands, buildings or other property transferred to the Commissioners by Government or acquired by gift, purchase or otherwise for local public purposes.

(2) The Local Government may, by notification, exclude any street, bridge, sewer or drain from the operation of this Act or of any specified section of this Act: [Cf. Ben. Act III of 1884, s. 30.]

Provided that, if the cost of the construction of the work shall have been paid from the Municipal Fund, such work shall not be excluded from the operation of this Act or of any specified section of this Act without the consent of the Commissioners at a meeting.

(3) All property, movable or immovable, and all interest of any kind whatsoever, derived under any of the enactments specified in Schedule 1, or otherwise, and vested in, or held in trust for, the late Commissioners under the Bengal Municipal Act, 1884, shall become vested in the Commissioners, and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act. [Cf. Ben. Act III of 1884, s. 4.] Ben. Act III of 1884.

Transfer of private streets, etc., to Commissioners.

87. The Commissioners at a meeting may agree with the person in whom the property in any street, bridge, tank, *ghat*, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare by notice in writing put up thereon or near thereto, that such street, bridge, tank, *ghat*, well, channel or drain has been transferred to the Commissioners. [Cf. Ben. Act III of 1884, s. 31.]

Thereupon the property therein or the control thereof, as the case may be, shall vest in the Commissioners and such street, bridge, tank, *ghat*, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

Transfers of certain public institutions to the Commissioners.

88. (*1*) Any hospital, dispensary, school, rest-house, *ghat* or market within a municipality, not being private property or the property of a religious institution or society, and all medicines, furniture and other articles appertaining thereto, not being such property, may, by order of the Local Government duly published on the spot, be vested in the Commissioners of the municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer: [Cf. Ben. Act III of 1884, ss. 32 and 33.]

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the *Calcutta Gazette* and in Bengali within the municipality.

(2) If the Commissioners at a meeting, after publication of the said notice, object to the transfer to themselves of any hospital, dispensary, school, rest-house, *ghat* or market on the ground that their funds

(Chapter IV.—Municipal property and finance.—Clauses 89—91.)

cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

Power to acquire property.

Acquisition of land.

89. (*1*) When any land, whether within or without the limits of a municipality, is required for the purposes of this Act or for the recoupment of the cost of carrying out any such purpose, the Local Government may, at the request of the Commissioners at a meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894; and on payment by the Commissioners of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Commissioners. [*Cf.* Ben. Act III of 1884, ss. 35 and 36.] I of 1894.

(*2*) The Commissioners shall be bound to pay to the Government the cost of any land which may be acquired for them on their application under the provisions of sub-section (*1*).

Power to purchase, sell, lease or exchange.

Power to purchase, lease and sell lands.

90. The Commissioners at a meeting may purchase or take on lease any land for the purposes of this Act, and may sell, lease, exchange or otherwise dispose of any land not required for such purposes or which they have acquired for purposes of recoupment. [*Cf.* Ben. Act III of 1884, s. 34.]

Contracts and liabilities.

Execution of contracts.

91. (*1*) The Commissioners may enter into and perform any contract necessary for the purposes of this Act. [*Cf.* Ben. Act III of 1884, s. 37.]

(*2*) Every contract made on behalf of the Commissioners in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Commissioners at a meeting and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

(*3*) Unless so executed, such contract shall not be binding on the Commissioners.

(*4*) Where the Indian Registration Act, 1908, or any rule made thereunder, requires or permits any act to be done with reference to a document by a person executing or claiming under the same, and the document has been executed on behalf of the Commissioners or is a document under which they claim, the act may, notwithstanding anything to the contrary contained in the aforesaid enactment or in any rule thereunder, be done by the Chairman, or Secretary of the municipality or by any other officer of the municipality empowered by the Commissioners at a meeting in this behalf. XVI of 1908.

(*Chapter IV.—Municipal property and finance.—Clauses 92-93.*)

Personal liabilities of Commissioners.

92. (*1*) A person shall be—

(*i*) liable for the loss or waste of any money or other property belonging to or under the control of, the Commissioners, if such loss or waste is a direct consequence of his neglect or misconduct while a Commissioner; and [*Cf.* Ben. Act III of 1884, s. 56.]

(*ii*) liable for any expenditure made from the Municipal Fund contrary to law, where such illegal payment has been authorized by him while a Commissioner or in his capacity of Commissioner, provided that the Local Government may, in their discretion, for reasons to be stated in writing, condone any such illegal payment.

(*2*) In any such case of—

(*i*) loss or waste, and

(*ii*) misapplication where such misapplication has not been condoned by the Local Government

a suit for compensation may be instituted either by the Commissioners, in which case the sanction of the Local Government shall be necessary, or by the Local Government themselves.

(*3*) Where the suit is instituted by the Local Government, the costs of the proceedings shall be a charge on the Municipal Fund.

II.—FINANCIAL PROVISIONS.

The Municipal Fund.

Municipal Fund.

93. (*1*) There shall be constituted for each municipality a fund to be called the Municipal Fund and there shall be placed to the credit thereof— [*Cf.* Ben. Act III of 1884, s. 67; U. P. Act II of 1916, s. 114 (*1*).]

(*a*) all sums received by or on behalf of the Commissioners under this Act or otherwise;

(*b*) all fines realized on conviction under the provisions of this Act or the rules or by-laws made thereunder, or under section 34 of the Police Act, 1861, under the Prevention of Cruelty to Animals Act, 1890, the Bengal Crue ty to Animals Act, 1920, the Bengal Food Adulteration Act, 1919, or under any other Act wherein or whereunder provision is made for the credit of the fine to the municipality; [V of 1861. XI of 1890. Ben. Act I of 1920. Ben. Act VI of 1919]

(*c*) the balance, if any, standing at the credit of the Municipal Fund of the municipality at the commencement of this Act.

(*2*) Nothing in this section shall affect any obligation of the Commissioners arising from a trust legally imposed upon or accepted by them. [*Cf.* U. P. Act II of 1916, s. 114 (*2*).]

(*Chapter IV.—Municipal property and finance.— Clauses 94—96.*)

Custody of Municipal Fund

94. Unless the Local Government otherwise direct, all sums received on account of the Municipal Fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality, to which they belong: [*Cf.* Ben. Act III of 1884, s. 83.]

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the Local Government.

Priority of payments on account of loans, trusts, establishment and audit.

95. Except as is otherwise provided in this Act, the Commissioners shall set apart and apply annually out of the Municipal Fund— [*Cf.* Ben. Act III of 1884, s. 68.]

(*a*) firstly, such sum as may be required for the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914; [*Cf.* U. P. Act II of 1916, s. 120 (*3*) (*b*).] IX of 1914.

(*b*) secondly, such sum as is required for the discharge of the liabilities and obligations arising from any trust legally imposed upon or accepted by the Commissioners; [*Cf.* U. P. Act II of 1916, s. 120 (*3*) (*a*).]

(*c*) thirdly, such sums as they are by this Act required to provide for payment of the salaries and allowances of their own establishment, including such contributions as are referred to in section 65;

(*d*) fourthly, such sum as the Local Government may direct towards the cost of audit, towards the cost of establishment in any office of account or in any treasury and towards the salary and cost of establishment of any assessor or other special officer who may be appointed under this Act.

Purposes to which Municipal Fund is applicable.

96. (*1*) Subject to the charges specified in section 92, and subject to the payment of other sums, charges and costs necessary for carrying this Act into effect or duly directed or sanctioned for payment from the Municipal Fund by or under any of the provisions of this Act or under any other enactment for the time being in force, the Commissioners at a meeting may apply the Municipal Fund to any of the following purposes within the municipality, that is to say— [*Cf.* Ben. Act III of 1884, s. 69.]

(*i*) the construction, diversion, maintenance and improvement of streets, tramways, bridges, squares, gardens, tanks, *ghats*, wells, channels, drains, latrines and urinals; [*Cf.* Ben. Act III of 1884, s. 69 (*i*).]

(*ii*) lighting; [*Cf.* Ben. Act III of 1884, s. 69 (*iii*).]

(*iii*) water-supply;

(*iv*) conservancy and drainage including out-fall works and sewage disposal;

(*v*) the acquiring, keeping and equipping of open spaces for purposes of ventilation, or for the promotion of physical exercise and public recreation; [*Cf.* Ben. Act III of 1884, s. 69 (*vii*).]

(Chapter IV.—Municipal property and finance.—Clause 96.)

(*vi*) the planting and preservation of trees in streets and public places; [New; *cf* Pun. Act III of 1911, s. 52 (2) (*b*).]

(*vii*) the construction, maintenance and improvement of offices and other buildings under the control of the Commissioners or required for municipal purposes; [*Cf.* Ben. Act III of 1884, s. 69 (*iii*).]

(*viii*) the construction and maintenance of model dwelling-houses for the working classes and for the poorer classes; [New.]

(*ix*) the construction, establishment, maintenance and improvement of schools, and of hostels to be used in connection with schools, either wholly or by means of grants-in-aid; [*Cf.* Ben. Act III of 1884, s. 69 (*iv*) and (*v*).]

(*x*) the training of teachers and the establishment of scholarships; [New; *cf.* Pun. Act III of 1911, s. 52 (2) (*c*).]

(*xi*) the construction, establishment, maintenance and improvement of hospitals, dispensaries, leper asylums, *serais*, poor-houses and *dharamsalas*, either wholly or by means of grants-in-aid; [*Cf.* Ben. Act III of 1884, s. 69 (*1*) (*iv*); and Pun. Act III of 1911, s. 52 (2) and (*d*).]

(*xii*) the employment of vaccinators and the promotion of vaccination; [*Cf.* Ben. Act III of 1884, s 69 (*1*) (*vii*).]

(*xiii*) the training and employment of Health Officers, Sanitary Inspectors, female medical practitioners, nurses, health visitors and midwives; [*Cf.* Ben. Act III of 1884, s. 69 (*1*) (*ix*).]

(*xiv*) the prevention of the spread of dangerous diseases; [New.]

(*xv*) the payment of the expenses of indigent inhabitants of the municipality for journeys to and from any hospital established in any part of British India for the treatment of special diseases, and of their subsistence and proper clothing thereat, according to such scale as may be fixed by the Commissioner of the Division; [New; *cf.* Assam Act I of 1915, s. 21 (*k*).]

(*xvi*) the construction, establishment, maintenance and improvement of veterinary dispensaries, and the training and employment of veterinary practitioners; [*Cf.* Ben. Act III of 1884, s. 69 (*1*) (*v*), (*ix*) and (*xi*).]

(*xvii*) the improvement of the breed of horses and cattle and the breeding of mules; [*Cf.* Ben. Act III of 1884 s. 69 (*1*) (*xii*).]

(*xviii*) the payment of rewards for the destruction of noxious animals or diseased or unclaimed dogs; [New; *cf.* Assam Act I of 1915, s. 65 (*b*).]

(*xix*) all acts and things which are necessary for carrying out the purposes of the Prevention of Cruelty to Animals Act, 1890, and the Bengal Cruelty to Animals Act, 1920; XI of 1890. Ben Act I of 1920.

(Chapter IV.—Municipal property and finance.— Clause 96.)

(*xx*) the construction, establishment, maintenance and improvement of municipal markets or slaughter-houses or the taking of markets or slaughter-houses on lease ; [Cf. Ben. Act III of 1884, s. 335.]

(*xxi*) the construction, establishment, maintenance and improvement of municipal dairy-farms, grazing-grounds and milk-depôts and all acts and things that may be necessary for the increase and improvement of the milk-supply ; [New.]

(*xxii*) the establishment and maintenance of public places for the disposal of the dead ;

(*xxiii*) the construction, establishment, maintenance and improvement of free libraries and museums ; [Cf. Ben. Act III of 1884, s. 69 (1) (*xii*).]

(*xxiv*) the establishment and maintenance of a fire-brigade ;

(*xxv*) the holding of fairs and industrial exhibitions ; [Cf. Ben. Act III of 1884, s. 69 (*xiv*) ; Pun. Act I of 1911, s. 52 (2) (*j*).]

(*xxvi*) the taking of a census ;

(*xxvii*) the survey of buildings and lands and the preparation and maintenance from time to time of survey maps and plans and of other records relating to survey ; [Cf. Pun. Act I of 1911, s. 52 (2) (*i*).]

(*xxviii*) the giving of relief, and the establishment of relief works, in time of famine or scarcity, and with the previous sanction of the Local Government and subject to such conditions and restrictions as the Local Government may impose, for the purpose of trading in foodstuffs, fuel, cloth and other similar necessaries of life, in cases of emergency ; [Cf. Pun. Act I of 1911, s. 52 (2) (*f*).]

(*xxix*) the payment of contributions to charitable institutions within the municipality for assisting in the disposal of unclaimed corpses and the burial or cremation of paupers ; [Cf. C. M. Act, s. 477 (*xi*).]

(*xxx*) the payment of compensation to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act ; [Cf. Ben. Act III of 1884, s. 362.]

(*xxxi*) the payment to an officer or servant of the Commissioners of a bonus for good work done, or of compensation for loss incurred in the execution of his duty ; and [New.]

(*xxxii*) all acts and things which are necessary for carrying out the purposes of this Act, or which are likely to promote the safety, health, welfare or convenience of the inhabitants of the municipality, or expenditure whereon may be declared by the Commissioners, with the sanction of the Local Government, to be an appropriate charge on the Municipal Fund. [Cf. Ben. Act III of 1884, s. 69 (1) (*xvii*).] [Cf. Pun. Act III of 1911, s. 52 (2) (*l*).]

(2) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section. [Cf. Ben. Act III of 1884, s. 69 (3).]

(Chapter IV.—Municipal property and finance.—Clause 97.)

Power to Commissioners to incur expenditure beyond the limits of the municipality.

97. Notwithstanding anything contained in section 96, the Commissioners at a meeting may, with the sanction of the Local Government or any officer duly authorized by them in this behalf,— [*Cf.* Bom. Act III of 1901, s. 52; Ben. Act III of 1884, ss. 70, 279.]

(*a*) incur expenditure beyond the limits of the municipality—

(*i*) in the acquisition of land, or

(*ii*) in the construction, maintenance or repair of works,

for the purpose of obtaining a supply of water or of lighting required for the inhabitants of the municipality, or for establishing places for the disposal of the dead or of establishing slaughter-houses or places for the disposal of night-soil or sewage or carcasses of animals beyond the said limits or for drainage works or for dairy-farms and grazing-grounds or for any other purpose calculated to promote the health, safety or convenience of the inhabitants of the said municipality ; or

(*b*) make a contribution towards expenditure incurred by the Commissioners of any other municipality, or incurred out of any public funds for any of the purposes mentioned in section 96 or for measures affecting the health, comfort or convenience of the public and calculated to benefit the residents within the limits of the contributing municipality or towards the salary of any officer under any other authority whose services are employed by them ; or

(*c*) create scholarships tenable outside the limits of the municipality :

Provided that nothing in this section, or in any other provision of this Act, shall be deemed to make it unlawful for the Commissioners of a municipality, when with such sanction as aforesaid they have constructed works beyond the limits of the said municipality for the supply of water or lighting or for drainage as aforesaid,—

(*a*) to supply or extend to, or for the benefit of, any person or buildings or lands in any place, whether such place is or is not within the limits of the said municipality, any quantity of water or of gas or electric current not required for the purposes of this Act within the said municipality or the advantages afforded by the system of such drainage works, on such terms and conditions, with regard to payment and to the continuance of such supply or advantages as shall be settled by agreement between the Commissioners and such person or the owner or occupier of such buildings or lands ; or

(*Chapter IV.—Municipal property and finance.— Clauses 98—100.*)

(*b*) to incur any expenditure, on such terms with regard to payment as may be settled as aforesaid, for the construction, maintenance repair or alteration of any connection pipes, or other works necessary for the purpose of such supply or for the extension of such advantages.

Objects not provided for by this Act.

98. The Local Government may, at any time with the consent of the Commissioners, transfer to them the management of any institution or the execution of any work not provided for by this Act and it shall thereupon be lawful to the Commissioners to undertake the management of such institution or the execution of such work : [*Cf.* Mad. Act V of 1920, s. 66.]

Provided that in every such case the funds necessary for such management or execution shall be placed at their disposal by the Local Government.

Commissioners not to be remunerated.

99. Except as provided in section 60, a Commissioner shall not be allowed any remuneration from the Municipal Fund except with the sanction of the Local Government. [New; *cf.* U. P. Act II of 1916, s. 37.]

Restriction on application of moneys received for certain purposes.

100. Notwithstanding anything contained in section 96— [*Cf.* Ben. Act III of 1884, ss. 307, 318A, 322 (3).]

(*1*) all moneys collected, received or recovered by the Commissioners, whether as taxes or fines or for the execution of works, for or in any respect relating to—

(*i*) the water-supply;

(*ii*) the lighting system;

(*iii*) the cleansing of private latrines, urinals and cesspools, and conservancy;

shall, after deduction of such proportionate share of the cost of collection and supervision as the Commissioners at a meeting may fix, be applied in defraying the expenses respectively—

(*a*) of making, extending or maintaining the water-supply,

(*b*) of making, extending or maintaining the lighting system,

(*c*) of cleansing latrines, urinals and cesspools and of conservancy,

as the case may be, and in repaying or paying interest on debts incurred in connection with the said purposes:

Provided that the Local Government may at any time on the request of the Commissioners authorize the expenditure of surplus moneys accrued in respect of any of the services mentioned in sub-clauses (*i*), (*ii*) and (*iii*) of this clause on any other of the services mentioned in those sub-clauses:

Provided also that before authorizing such expenditure the Local Government shall give an opportunity for the submission of any objection to such expenditure by any rate-payer in the municipality and shall consider such objection; and

(*Chapter IV.—Municipal property and finance.- Clauses 101—105.*)

(*2*) money which has been received by the Commissioners on account of any hospital or dispensary, or directed by them to be applied to the establishment or maintenance of any hospital or dispensary shall not be expended on any other object. [*Cf.* Ben. Act III of 1884, s. 69A (2).]

The Budget.

Annual estimates to be prepared.

101. (*1*) The Commissioners shall have prepared and laid before them at a meeting to be held at least two months before the close of the year, a complete account of the actual and expected receipts and expenditure for the year ending on the thirty-first day of March next following such date together with a budget estimate of the income and expenditure of the municipality for the year commencing on the first day of April next following. [*Cf.* U. P. Act II of 1916, s. 99; Ben. Act III of 1884, ss. 72, 318A.]

(*2*) Subject to the provisions of section 104, the Commissioners shall, at such meeting, decide upon the appropriations and the ways and means contained in the budget estimate and, by special resolution, sanction a budget which shall be submitted to the Local Government or to such officer or officers as the Local Government may by order direct in this behalf.

(*3*) Subject to the like provisions, the Commissioners may vary or alter from time to time, as circumstances may render desirable, by special resolution, the budget sanctioned under sub-section (*2*).

The revised budget.

102. As soon as may be after the first day of October, a revised budget for the year shall be framed and such revised budget shall, so far as may be, be subject to all the provisions applicable to a budget made under section 101. [*Cf.* U. P. Act II of 1916, s. 100.]

Minimum closing balance shown in budget.

103. In framing a budget the Commissioners shall provide for the maintenance of such minimum closing balance (if any) as the Local Government may, by order, prescribe, for the service of municipal loans and for carrying out any duty or obligation specifically imposed upon them under this Act or any other enactment. [*Cf.* U. P. Act II of 1916, s. 101.]

Budgets of indebted boards.

104. Where, in the opinion of the Local Government, the condition of indebtedness of any municipality, is such as to make the control of Government over its budget desirable, the Local Government may, by order declaring that such is the case, direct that the budget of such municipality shall be subject to the sanction of the Local Government or of the officer to whom it is to be submitted under the provisions of sub-section (*2*) of section 101, as the case may be, and that the power to vary or alter the budget under sub-section (*3*) of section 101 shall be subject to conditions to be prescribed by rule. [*Cf.* U. P. Act II of 1916, s. 102; Ben. Act III of 1884, s. 82.]

Prohibition of expenditure in excess of budget.

105. (*1*) Where a budget has been passed the Commissioners shall not incur any expenditure under any of the heads of the budget, other than a head providing for the refund of taxes, in excess of the amount passed under that head, without making provision for such excess by the variation or alteration of the budget. [*Cf.* U. P. Act II of 1916, s. 103.]

(*Chapter IV.—Municipal property and finance.—Clauses 106—108.*)

(2) Where any expenditure under any head providing for the refund of taxes is incurred in excess of the amount passed under that head, provision shall be made without delay for such expenditure by the variation or alteration of the budget.

Power of Local Government, if work estimated to cost more than ten thousand rupees.

106. If any work is estimated to cost above ten thousand rupees, the Local Government may require the plans and estimates of such work to be submitted for their approval, or for the approval of any officer of Government, before such work is commenced; and may require statements of the progress and completion of such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as they may prescribe, for their appoval, or for the approval of such officer. [*Cf.* Ben. Act III of 1884, s. 79.]

III.—GENERAL.

Disposal of Municipal Fund and property, on subdivision, union or withdrawal of municipalities.

Apportionment and disposal of municipal property upon a subdivision or union of municipalities.

107. When two or more municipalities are united or a municipality is subdivided by a notification under section 8 the Municipal Funds or Fund, and all property vested in the Commissioners of the municipalities or municipality concerned shall be consolidated, or apportioned in such manner as the Local Government may direct. [*Cf.* Ben. Act III of 1884, s. 9B.]

Disposal of fund and property on exclusion of local area from municipality or withdrawal of municipality from Act.

108. (*1*) When a local area is excluded from a municipality by a notification under section 8, the Local Government shall, after consulting the Commissioners, frame a scheme determining what portion of the balance of the Municipal Fund and other property vested in the Commissioners shall vest in His Majesty for the benefit of the inhabitants of the local area and in what manner the liabilities of the Commissioners shall be apportioned between the Commissioners and the Secretary of State in Council; and on the publication of such scheme in the *Calcutta Gazette* such property and liability shall vest and be apportioned accordingly. [*Cf.* Pun. Act III of 1911, s. 8; C. P. Act XV of 1903, s. 7.]

(2) When the whole area comprised in any municipality is withdrawn from the operation of this Act by a notification under section 8, the balance of the Municipal Fund and all other property at the time of the publication of the notification vested in the Commissioners shall vest in His Majesty and the liabilities of the Commissioners shall be transferred to the Secretary of State for India in Council.

(*3*) All property vested in His Majesty under this section shall be applied, under the orders of the Local Government, to the discharge of the liabilities imposed on the Secretary of State for India in Council thereby or for the promotion of the safety, health, welfare or convenience of the inhabitants of the area affected.

(*Chapter IV.—Municipal property and finance.— Clauses 109-110.*)

Audit.

Audit of accounts.

109. (*1*) The accounts of Municipal Funds shall be audited at such times as the Local Government may prescribe. [New

(*2*) The appointment of auditors of the accounts of Municipal Funds shall be made by the Local Government and such auditors shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860

(*3*) The Local Government may direct that the whole or any portion of the cost of audit as determined by them, including the salary of the auditor, shall be paid from the Municipal Fund within such time as they may fix.

Rules as to the Municipal Fund and property.

Power to make rules.

110. The Local Government may make rules— [*Cf.* Ben. Act III of 1884, ss. 69 (*1*), 69B(*ii*).]

(*a*) to regulate the application of the Municipal Fund to the purposes to which it is applicable and generally for the guidance of the Commissioners in all matters connected with the carrying out of the said purposes;

(*b*) to regulate the keeping, checking and publication of accounts and the periodical audit thereof;

(*c*) to regulate the preparation of the budget estimate and the expenditure of money for purposes provided therein; [*Cf.* Ben Act III of 1884, ss. 72, 78.]

(*d*) to provide for the retention of adequate working and closing balances; [New.]

(*e*) to provide for the preparation of plans and estimates for works to be partly or wholly constructed at the expense of the Commissioners, and to determine the persons by whom, and the conditions subject to which, such plans and estimates are to be sanctioned; [New; *cf.* Pun. Act III of 1911, s 240 (*1*) (*8*).]

(*f*) to regulate the preparation, submission and publication of returns, statements and reports by the Commissioners, and to prescribe registers and forms; [*Cf.* Ben. Act III of 1884, ss. 81, 82.]

(*g*) to determine the persons by whom orders for payment of money from the Municipal Fund may be signed, how such payments shall be made and by whom receipts may be given; [*Cf.* Ben. Act III of 1884, s 84.]

(*h*) to prescribe the qualifications of candidates for employment as veterinary practitioners under clause (*xvi*) of section 96; and [*Cf.* Ben. Act III of 1884, s. 69B.]

(*i*) to regulate any other matter relating to the Municipal Fund or municipal property in respect of which the Act makes no provision, or insufficient provision, and for which provision is, in the opinion of the Local Government, necessary. [*Cf.* U. P. Act II of 1916, s 127 (*c*).]

CHAPTER V.

MUNICIPAL TAXATION.

Imposition of taxes.

Power to impose taxes

111. (*1*) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, subject to the provisions of this Act, impose within the limits of the municipality the following rates, taxes, tolls and fees, or any of them :— [*Cf.* Ben. Act III of 1884, ss. 85, 86 and 321.]

(*a*) a rate on holdings situated within the municipality assessed on their annual value ;

(*b*) a water-rate on the annual value of holdings ;

(*c*) a lighting-rate on the annual value of holdings ;

(*d*) a conservancy, latrine and drainage rate (hereafter known as the conservancy rate) on the annual value of holdings ;

(*e*) a tax on carriages and on horses and other animals mentioned in Schedule III;

(*f*) a tax on the trades, professions and callings specified in Schedule IV at such rates as may be fixed by the Commissioners with the approval of the Local Government and under such conditions and limitations as the Local Government may by rule prescribe;

(*g*) a tax on dogs kept within the municipality ; [New.]

(*h*) a fee on the registration of carts ; [New; *cf.* U. P. Act II of 1916, s. 128(*1*) (*iv*).]

(*i*) tolls on ferries ;

(*j*) a fee on vessels moored within the limits of the municipality at *ghats* or landing places constructed and maintained by the Commissioners ;

(*k*) any other tax the proposals for imposing which have been sanctioned by the Local Government and, where such confirmation is required, confirmed by the Governor-General in Council ; and [New; *cf.* Pun. Act III of 1911, s. 61A ; U. P. Act II of 1916, s. 128 (*1*) (*xiv*).]

(*l*) any other tax which the Commissioners are empowered to impose under any law for the time being in force.

(*2*) The Commissioners may, from time to time, at a meeting convened as aforesaid, and in accordance with a scale of fees to be approved by the Local Government, charge a fee in respect of the issue and renewal of any license which may be granted by them under this Act and in respect of which no fee or tax is leviable under sub-section (*1*). [New.]

Restrictions on the imposition of the tax on holdings.

112. (*1*) The rate on holdings shall not be imposed—

(*a*) in any municipality mentioned in Schedule V at a rate exceeding fifteen *per centum*, or in any other municipality at a rate exceeding ten *per centum*, on the annual value of holdings : [*Cf.* Ben. Act III of 1884, s. 85 (*b*).]

(Chapter V.—Municipal taxation.—Clause 113.)

Provided that with the sanction of the Local Government the rate on holdings in any municipality may be imposed at a higher rate ;

(*b*) on any holding which is used exclusively as a place of public worship, or as a mortuary or which is duly registered as a public burial or burning ground under this Act. [*Cf.* Ben. Act III of 1884, s 93.]

(*2*) The Commissioners at a meeting may, either wholly or partially, exempt from the rate on holdings any holding which is used exclusively for purposes of public charity.

(*3*) Where the aggregate annual value of all the holdings held by any one owner within a municipality does not exceed six rupees, the rate on holdings shall not be imposed on any of the holdings of the said owner. [*Cf.* Ben. Act III of 1884, s. 85 (*b*).]

(*4*) The Local Government may, at any time, include in, or exclude from, Schedule V the name of any municipality.

Restrictions on the imposition of the water and lighting rates.

113. (*1*) The imposition of a water-rate or of a lighting-rate shall be subject to the following restrictions, namely,—

(*a*) that the rate shall be imposed only on holdings within an area for the supply of water to which, or for the lighting of which, as the case may be, a scheme involving the laying of pipes, wires, cables or other similar apparatus has been sanctioned by the Local Government : [*Cf.* Ben. Act III of 1884, ss. 371D, 308, 319.]

Provided that where the Commissioners—

(*i*) distribute the supply of water by means of water-carts or other like agency or provide a water-supply, approved by the Local Government, by means of wells or tanks or other reservoirs, or

(*ii*) provide kerosine or acetelyne lamps, or such other means of lighting as may be approved by the Local Government;

the Commissioners at a meeting may impose in case (*i*) a water-rate and in case (*ii*) a lighting-rate under such conditions and limitations as may be prescribed by the Local Government;

(*b*) that the rate shall not be imposed on land used exclusively for purposes of agriculture, or on any holding consisting only of tanks, or, in the case of the water-rate on any holding, no part of which is within a radius, to be fixed by the Commissioners at a meeting, from the nearest standpipe or other supply of water available to the public ; [*Cf.* Ben. Act III of 1884, s. 279 (*3*), proviso.]

(*c*) that without the sanction of the Local Government the water-rate shall not be levied at more than seven-and-a-half *per centum* and the lighting-rate at more than three *per centum* on the annual value of holdings ; [*Cf.* Ben. Act III of 1884, s. 309.]

(*Chapter V.—Municipal taxation.—Clause 114.*)

(*d*) that the rate shall not be leviable until a supply of water has been provided in the area to be supplied, or until the lamps in the area to be lighted have been lighted, as the case may be, nor shall the rate be leviable for any quarter or portion of a quarter antecedent to the provision of such water-supply or lighting. [*Cf.* Ben. Act III of 1884, s. 310.]

(*2*) Nothing in this section shall prevent the Commissioners at a meeting from making any special arrangement consistent with this Act for a supply of water or electric current or gas to persons residing beyond the radius fixed by the Commissioners at a meeting and for the levy of charges for the same.

(*3*) With the sanction of the Commissioners at a meeting the amount of the water-rate may vary with the distance of holdings from the nearest standpipe or other sources of water-supply, and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises. [*Cf.* Ben. Act III of 1884, s. 279 (*1a*).]

Restrictions on the imposition of the conservancy rate.

114. (*1*) The imposition of the conservancy rate shall be subject to the following restrictions, namely,—

(*a*) that where there is no underground sewerage system the rate on any jail, reformatory or lunatic asylum in which an establishment is maintained for the cleansing of latrines, urinals and cesspools therein shall not exceed such proportion of the rate in force for the municipality as the Local Government may fix; [*Cf.* Ben. Act III of 1884, s. 334A.]

(*b*) that the rate shall not be leviable in any area until the Commissioners have made provision for the cleansing of private latrines, urinals, and cesspools within such area, nor shall the rate be leviable for any quarter or portion of a quarter antecedent to the making of such provision; [*Cf.* Ben. Act III of 1884, s. 321.]

(*c*) that the rate shall not without the sanction of the Local Government be levied at more than seven *per centum* on the annual value of any holding. [*Cf.* Ben Act III of 1884, s. 321.]

(*2*) The Commissioners at a meeting at their discretion may compound for any period not exceeding one year with the person liable to pay the rate on any railway premises or on any premises used as a mill, factory, dockyard, workshop, *cooly*-depôt, school, hospital, market, court-house or other similar place for a certain sum to be paid by such person in lieu of the rate or, in the case of such premises or places, may in lieu of levying the rate on the annual value of the holding levy it at a certain amount per head, to be fixed by the Commissioners at a meeting, on the number of persons living within or habitually resorting to such premises or places. [*Cf.* Ben. Act III of 1884, ss. 325 and 326.]

(*3*) Notwithstanding anything contained in this section, any person otherwise liable to pay the rate on any railway premises or on any premises used as a mill, factory, dockyard, workshop or the like may,

(Chapter V.—Municipal taxation.—Clauses 115—117.)

from year to year by application to the Commissioners, require that the rate shall be levied on such premises at a percentage not exceeding one-fourth of the percentage fixed under sub-section *(1)*, provided that he proves to the satisfaction of the Commissioners that all latrines and urinals on such premises are served, cleansed and kept in a satisfactory condition by an establishment maintained at his own cost, and that the sewage therefrom undergoes such treatment at his cost, by means of septic tanks or other similar works constructed to the satisfaction of the Commissioners, as to render the effluent innocuous and inoffensive and capable of being discharged into the municipal drains, and the Commissioners shall levy such rate accordingly:

Provided that the exemption from paying the full rate conferred under this sub-section shall terminate in the event of the Commissioners providing an underground sewerage system.

Power to call for list of occupants of holdings.

115. The Commissioners may, for the purposes of conservancy, or for the levy of the conservancy rate, by a notice in writing, require the owner or occupier of any holding to furnish, within a time to be specified in the notice, a list of the number of persons living within, or habitually resorting to, such holding. [*cf.* Act III of 1884, ss. 333, 334.]

Power to impose consolidated rate.

116. *(1)* Notwithstanding anything contained in the foregoing sections, the Commissioners may, for the purpose of assessing, levying or collecting, but not for the purpose of imposing or granting exemption from, the rates described in clauses *(a)*, *(b)*, *(c)* and *(d)* of sub-section *(1)* of section 111, consolidate any two or more of such rates which are imposed upon holdings and levy a consolidated rate on the annual valuation of holdings: [*cf.* U. P. Act II of 1916, s. 138.]

Provided that in any register or assessment list relating to a consolidated rate and used for the purpose of informing any person of his liability thereunder, or for the purpose of securing compliance with the provisions of section 113 or section 114, the Commissioners shall apportion the consolidated rate amongst the several rates comprised therein, so as to show approximately the amount assessed or collected on account of each separate rate.

(2) Such consolidated rate shall be payable in such proportions by the owners and occupiers of holdings as the Commissioners at a meeting, with the approval of the Local Government, may determine.

Deductions required by exemptions.

117. *(1)* In assessing a consolidated rate, effect shall be given to any partial or total exemption from any single rate comprised therein. [*cf.* U. P. Act II of 1916, s. 139.]

(2) Such effect shall be given—

(a) in the case of a partial exemption, by means of the deduction from the total amount of the consolidated rate which would otherwise be leviable or assessable in respect of any holdings to which the exemption applies, of a proportionate part, corresponding to the exemption, of the amount which might otherwise have been assessed on account of the single rate; and

(*Chapter V.—Municipal taxation.—Clauses 118—122.*)

(*b*) in the case of a total exemption, by means of the deduction from such total amount of the whole amount assessed on account of the single rate in respect of which exemption has been granted.

Assessment of rates on the annual value of holdings.

Annual value of holdings.

118. (*1*) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let. [*Cf.* Ben. Act III of 1884, s. 101.]

(*2*) If such gross annual rental cannot, in the opinion of the assessor, be easily estimated or ascertained, the annual value of such holding shall be deemed to be an amount which may be equal to, but may not exceed, seven-and-a-half *per centum* on the actual cost of erection of the building or buildings erected on such holding *plus* a reasonable ground rent for the land comprised in the holding :

Provided that, where the actual cost so ascertained exceeds one *lakh* of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one *lakh* of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section 123.

(*3*) The value of any machinery or furniture which may be on a holding shall not be taken into consideration in estimating the annual value of such holding under this section.

(*4*) The Local Government may direct that the proviso to sub-section (*2*) shall not have effect in any municipality which they may name in this behalf.

Power of Commissioners to decide questions arising out of the definition of "holding".

119. For the purpose of, and subject to, clause (*22*) of section 3— [New.]

(*a*) if a question arises whether any land is included within one holding, the decision thereof shall rest with the Commissioners at a meeting;

(*b*) the Commissioners at a meeting shall determine what class of ownership shall be accepted as the test for determining whether lands within a municipality are held under one title or agreement ;

and the decision of the Commissioners shall be final.

Taxes by whom payable.

120. Except as otherwise provided by this Act, any rate which is assessed on the annual value of a holding shall be payable by the owner of the holding. [*Cf.* Ben. Act III of 1884, ss. 103, 286 and 322.]

Preparation of valuation list.

121. When it has been decided to impose any rate to be assessed on the annual value of holdings, the assessor, after making such inquiries as may be necessary, shall determine the annual value of all holdings within the municipality in the manner provided in this chapter, and shall enter such value in a valuation list. [*Cf.* Ben. Act III of 1884, ss. 96, 101.]

Returns required for ascertaining annual value.

122. (*1*) The assessor, in order to prepare the valuation list, may, whenever he thinks fit, by notice require the owners or occupiers of all holdings to [*Cf.* Ben. Act III of 1884, s. 99.]

(Chapter V.—Municipal taxation.—Clauses 123-124.)

furnish him with returns of the rent or annual value thereof and a description of the holdings containing such particulars as the assessor may direct; and the assessor, or any person authorized by him in writing in that behalf, may enter, inspect and measure any such holding at any time between sunrise and sunset:

Provided that at least twenty-four hours' previous notice of the intention to enter, inspect and measure any holding shall be given to the occupier thereof, unless he waives his right to such notice.

(*2*) Whoever refuses or fails to furnish any such return or description for the space of one week from the day on which he has been required to do so, or knowingly furnishes a false or incorrect return or description, shall be liable to fine as provided in this Act. [*Cf.* Ben. Act III of 1884, s. 100.]

Determination of percentage of rate on holdings.

123. Subject to the provisions of this Act, the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which any rate on the annual value of holdings shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year: [*Cf.* Ben. Act III of 1884, s 102.]

Provided that, when this Act is first extended to any place, the first rate or rates shall be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting:

Provided further that, where the amount standing to the credit of the Commissioners in the Municipal Fund in any municipality is, in the opinion of the Local Government, insufficient to meet the liabilities of the Commissioners, no decrease shall be made in the percentage of any rate levied by them without the previous sanction of the Local Government.

Preparation of assessment list.

124. As soon as possible after the percentage at which the rate or rates shall be levied for the next year has been determined under section 123, the Commissioners shall cause to be prepared by the assessor an assessment list, which shall contain the following particulars and any others which the Commissioners may think proper to include:— [*Cf.* Ben. Act III of 1884, s. 103.]

(*a*) the name of the street in which the holding is situated;

(*b*) the number of the holding on the register:

(*c*) a description of the holding;

(*d*) the annual value of the holding;

(*e*) the name of the owner and occupier;

(*f*) the amount of rate payable for the year (each rate to be shown separately unless consolidated);

(*g*) the amount of quarterly instalment;

(*h*) if the holding is exempted from assessment, a note to that effect.

(*Chapter V.—Municipal taxation.—Clauses 125-126.*)

Revision and duration of the list.

125. (*1*) A new valuation and assessment list shall ordinarily be prepared, in the same manner as the original lists, once in every five years. [Cf. U. P. Act II of 1916, s. 115: Ben. Act III of 1884, ss. 97, 322.]

(*2*) Subject to any alteration or amendment made under section 126 and to the result of any application under section 136 every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and until the first day of April next following the preparation of a new list.

Amendment and alteration of list.

126. (*1*) The Commissioners may at any time alter or amend the assessment list— [Cf. U. P. Act II of 1916, s. 117.]

(*a*) by entering therein the name of any person or any property which in their opinion ought to have been entered, or any property which has become liable to taxation after the authentication of the assessment list under section 135; or [Cf. Ben. Act III of 1884, s. 108.]

(*b*) by substituting therein for the name of the owner or occupier of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the holding; or [Cf. Ben. Act III of 1884, s. 109.]

(*c*) by enhancing the valuation of, or assessment on, any holding which in their opinion has been incorrectly valued or assessed by reason of fraud, misrepresentation or mistake; or [Cf. Ben. Act III of 1884, s. 108.]

(*d*) by re-valuing or re-assessing any holding, the value of which has been increased by additions or alterations to buildings; or [Cf. Ben. Act III of 1884, s. 108.]

(*e*) where the percentage on the annual value at which any rate is to be levied has been altered by the Commissioners under the provisions of section 123, by making a corresponding alteration in the amount of rate payable in each case; or [Cf. Ben. Act III of 1884, s. 97A.]

(*f*) by reducing, upon the application of the owner or occupier, the valuation of any holding which has been wholly or partly demolished or destroyed, or the value of which has been diminished from any cause beyond the control of the owner or occupier, the operation of which could not have been prevented with due precaution; or [Cf. Ben. Act III of 1884, s. 107.]

(*g*) by correcting any clerical or arithmetical error.

(*2*) The Commissioners shall give at least one month's notice to any person interested of any alteration which the Commissioners propose to make under clauses (*a*), (*b*), (*c*) or (*d*) of sub-section (*1*) and of the date on which the alteration will be made.

(*3*) The provisions of sections 136 to 139 applicable to objections shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (*2*) and to any application made under clause (*f*) of sub-section (*1*).

(*Chapter V.—Municipal taxation.—Clauses 127—130.*)

(*4*) Every alteration made under sub-section (*1*) shall be signed by the Chairman or Vice-Chairman and subject to the result of an application under section 136, shall take effect from the beginning of the quarter next following that in which the alteration was made, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list. [*Cf.* Ben. Act III of 1884, ss. 97A, 108 and 109.]

Conclusiveness of entries in list.

127. An entry in an assessment list shall be conclusive proof— [*Cf.* U. P. Act II of 1916, s. 146.]

(*a*) for any purpose connected with a rate or rates to which the list refers, of the amount leviable in respect of any holding during the period to which the list relates, and

(*b*) for the purpose of assessing any other municipal rate, of the annual value of any holding during the said period.

Power to assess building and lands together, where land is let on a building lease.

128. (*1*) If any house belongs to one owner and the land on which it stands and any adjacent land which is usually occupied therewith belongs to another, the Commissioners may treat such house and land as a single holding and assess them to rates accordingly. [*Cf.* Ben. Act III of 1884, s. 104.]

(*2*) The total amount of the rate or rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate or rates so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

(*3*) In case of dispute the Commissioners shall determine what amount the owners of the house and of the land shall pay respectively and the decision of the Commissioners shall be final.

Power to reduce rates in cases of excessive hardship.

129. Whenever, from the circumstances of the case, the levy of a rate or rates on any holding in the municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same: [*Cf.* Ben. Act III of 1884, s. 106.]

Provided that such reduction or remission shall not, unless renewed by the Commissioners at a meeting, have effect for more than one year. [New]

Remission or refund on account of vacant holdings.

130. (*1*) When any holding has been unoccupied and unproductive of rent for sixty or more consecutive days the Commissioners shall remit, and if the rate or rates have been paid, shall refund three quarters of the amount due on account of such period: [*Cf.* Ben. Act III of 1884, ss. 110, 282 and 283; Pun. Act III of 1911, s. 72.]

Provided that—

(*i*) the person liable to pay the rate or rates or his agent has given to the Commissioners notice in writing of the vacancy and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners; and

(*ii*) the amount of rate or rates to be remitted or refunded shall not be calculated from any date prior to the date of the delivery of such notice.

(*Chapter V.—Municipal taxation.—Clauses 131, 132.*)

(*2*) When any such holding as aforesaid consists of separate tenements, one or more of which has, or have, been unoccupied and unproductive of rent for any period of not less than sixty consecutive days, the Commissioners may, subject to the proviso to sub-section (*1*), remit such portion (if any) of the rate or rates, not exceeding three-fourths, as they may think equitable. [Cf. Pun. Act III of 1911, s. 72.]

(*3*) The burden of proving the facts entitling any person to claim relief under this section shall be upon him.

(*4*) For the purposes of this section—

(*i*) neither the presence of a caretaker nor the mere storing in one room of an otherwise unoccupied dwelling-house of the furniture habitually used in it shall constitute occupation of the house, unless such house is maintained as a pleasure resort or as a temporary place of residence for a person ordinarily residing elsewhere, and

(*ii*) a house shall be deemed productive of rent if let to a tenant who has a continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

Owner to give notice of re-occupation.

131. Every person who is the owner of any holding for which a remission or refund of the rate has been made under section 130, shall give notice of the re-occupation of such holding within ten days of such re-occupation. [Cf. Ben. Act III of 1881, ss. 111 and 131.]

Notice to be given to the Chairman of all transfers of title of persons primarily liable to payment of rates.

132. (*1*) Whenever the title to or over any land or building of any person primarily liable for the payment of rates on such property is transferred, both the transferor and the transferee shall, within three months of the registration of the deed of transfer, if it be registered, or if it be not registered, within three months of its execution, or, if no instrument be executed, within three months of the actual transfer, give notice in writing of such transfer to the Chairman. [New.]

(*2*) Every person primarily liable for the payment of rates on any land or building, who transfers his title to or over such property, without giving notice of such transfer to the Chairman, as aforesaid, shall, unless the Commissioners, on grounds of hardship arising out of special circumstances, otherwise direct, in addition to any other liability which he incurs through such neglect, continue liable for the payment of all such rates from time to time payable in respect of the said property until he gives such notice, or until the transfer shall have been recorded in the municipal books.

(*3*) Nothing in this section shall be held to diminish the liability of the transferee for the said rates or to affect the prior claim of the Commissioners for the recovery of the rates due thereupon and the Commissioners may revise the assessment list as against the transferee with effect from the date on which they are satisfied that the transfer was made.

(*Chapter V.—Municipal taxation.—Clauses 133—136.*)

General provisions relating to assessment.

Appointment of assessors of municipal rates

133. (*1*) The Local Government shall prepare a list of persons qualified in their opinion to be appointed as municipal assessors. [New]

(*2*) When a new valuation and assessment list is to be prepared for any municipality the Commissioners at a meeting shall appoint from the list referred to in sub-section (*1*) an assessor for the purposes of this chapter, on such salary and with such establishment as may be fixed by them with the approval of the Local Government.

Appointment of assessor by Local Government in case of default.

134. (*1*) If the Commissioners fail to comply with the provisions of section 133 within such period as the Local Government may fix, the Local Government may appoint for such period as may be necessary a suitable person from among the persons included in the said list to prepare the valuation and assessment list of such municipality. [New]

(*2*) If there is no person for the time being available for appointment as assessor from among the persons included in the list referred to in sub-section (*1*) of section 133, the Commissioners at a meeting, or in case of default by the Commissioners, the Local Government, may appoint any person approved by the Local Government on such salary, for such period, and with such establishment as the Commissioners with the approval of the Local Government, or the Local Government in the case of default, may determine.

(*3*) An assessor appointed by the Local Government under this section shall be paid monthly out of the Municipal Fund such salary and cost of establishment as may be fixed by the Local Government.

Publication of notice of assessments

135. (*1*) When the assessment list mentioned in section 124 has been prepared or revised, the Chairman shall sign the same, and shall cause it to be deposited in the office of the Commissioners, and shall give public notice of the place where the list may be inspected. [Cf. Ben. Act III of 1884, s. 112]

(*2*) In all cases in which any property is for the first time assessed or the assessment is increased, the Chairman shall also give notice thereof to the owner or occupier of the property, if known. [Cf. U. P. Act II of 1916, s. 143(*1*)]

Application for review.

136. (*1*) Any person who is dissatisfied with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation or to exempt him from the assessment or rate. [Cf. Ben. Act III of 1884, s. 113]

(*2*) No such application shall be received after one month from the date of publication of the notice required under sub-section (*1*) of section 135, or the service of the notice required under sub-section (*2*) of that section or after the expiration of one month from the date of service of the fresh notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire. [Cf. Ben. Act III of 1884, s. 116]

(*3*) Notice of every such application shall be given by the Commissioners to the assessor.

(Chapter V.—Municipal taxation.—Clauses 137—142.)

Hearing and determination of applications by committee.

137. *(1)* Every application presented under section 136 shall be heard and determined by a committee consisting of the Chairman, a Commissioner appointed by the Commissioners at a meeting and a person appointed by the Local Government. [New; *cf.* Ben. Act III of 1884, s. 114.]

(2) Such committee, after taking such evidence and making such inquiry as it may deem necessary, may pass such order as it thinks fit in respect of such application.

(3) The decision of the committee, or of a majority of the members thereof in such cases, shall be final.

Assessment to be questioned only under Act.

138. No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided. [*Cf.* Ben. Act III of 1884, s. 116.]

Payment of rate how affected by objections to valuation.

139. *(1)* When an objection to an assessment or valuation has been made under section 136 the rate shall, pending the final determination of the objection, be paid on the previous assessment or valuation. [*Cf.* C. M. Act, s 164.]

(2) If, when the objection has been finally determined, the previous assessment or valuation is altered, then—

(a) any sum paid in excess shall be refunded or allowed to be set off against any present or future demand of the Commissioners under this Act; and

(b) any deficiency shall be deemed to be an arrear of the rate and recoverable as such.

Recovery of taxes.

Office hours for payment of taxes.

140. By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business. [*Cf.* Ben. Act III of 1884, s. 117.]

Amount of tax payable, and tax to be paid in advance.

141. *(1)* Unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act, the amount entered in the lists the notice relating to which is published under section 135, shall be deemed to be the amount due from any person on account of any rate on the annual value of holdings. In case of such subsequent alteration the amount to which the assessment or rating is so altered shall be deemed to be the amount due. [*Cf.* Ben. Act III of 1884, s. 118.]

(2) Such rate shall be payable in quarterly instalments and every such instalment shall be deemed to be due on the first day of the quarter in respect of which it is payable. [*Cf.* Ben. Act III of 1884, s. 322.]

Receipts to be given.

142. For all sums paid on account of any tax, toll, fee or rate under this Act a receipt stating the amount and the tax, toll, fee or rate on account of which is paid shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts. [*Cf.* Ben. Act III of 1884, s. 119.]

(*Chapter V.—Municipal taxation.—Clauses 143—145.*)

Bill and notice of demand to be presented.

143. (*1*) When any sum has become due on account of any tax, toll, fee or rate the Commissioners shall, with the least practicable delay, cause to be presented to the person liable to the payment thereof a bill for the said sum, which shall contain a statement of the period and of the tax, toll, fee or rate on account of which the charge is made.

[*Cf.* Ben. Act III of 1884, s. 120.]

(*2*) If the amount mentioned in such bill is not paid on presentation thereof, a notice of demand in the prescribed form with copy of the bill appended thereto. shall be served on the person liable to pay the same, and such notice of demand may be served at any subsequent time:

Provided that no charge shall be made in respect of the service of such notice.

(*3*) Such notice shall be signed by the Chairman or an officer authorized by the Commissioners in that behalf, and shall be served by a person authorized to receive payment.

Levy by distress on failure to pay tax, toll, fee or rate.

144. If any person, after service upon him of such bill and notice, does not, within fifteen days of the service of such notice, pay the sum due, either to the Commissioners at their office, or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs according to the prescribed scale of fees, may, at any time within six months after the date of service of the said notice, be levied by distress and sale of any movable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found, or of any movable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax, toll, fee or rate:

[*Cf.* Ben. Act III of 1884, s. 121.]

Provided that, when the holding in respect of which the default is committed is a place of business and the movable property distrained is shown to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released:

Provided also that, if the said property or any part thereof belongs to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

Distress how to be made.

145. (*1*) Every warrant of distress and sale under section 144 shall be issued by the Commissioners, and shall be in the prescribed form.

[*Cf.* Ben. Act III of 1884, s. 122.]

(*2*) Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

(*Chapter V.—Municipal taxation.—Clauses 146—148.*)

(*3*) Such officer shall make in the presence of two witnesses an inventory of all movable property seized under the warrant and shall give not less than ten days' previous notice of the sale. and of the time and place thereof by beat of drum, in the municipality or ward in which the property is seized, and by serving on the defaulter a notice in the prescribed form :

Provided that, if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.

Officer may break open door.

146. The officer charged with the execution of the warrant may, under the special order of the Chairman, between sunrise and sunset, break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any movable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made he cannot otherwise obtain admittance : [*Cf.* Ben. Act III of 1884, s. 123.]

Provided that he shall not enter or break open the door of any room appropriated to women, except, after sufficient notice and opportunity given to enable the women to remove to some part of the premises where their privacy may be preserved.

Sale how to be conducted.

147. (*1*) If the sum due be not paid with costs before the time fixed for the sale, or if the warrant be not discharged or suspended by the Commissioners, the movable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs. [*Cf.* Ben. Act III of 1884, s. 124.]

(*2*) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

(*3*) The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the prescribed form.

Sale of property beyond limits of municipality.

148. If the Commissioners are unable to recover under section 147 the sum due with costs, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his court for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within Bengal, and such other Magistrate shall endorse the warrant so issued, and cause it to be executed and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners. [*Cf.* Ben. Act III of 1884, s. 127.]

(*Chapter V.—Municipal taxation.—Clauses 149—155.*)

Commissioners to keep account of distresses and sales.

149. The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes, tolls, fees and rates under this Act. [*Cf.* Act III of 1884, s. 126.]

Power to Commissioners to bring suits in place of distress.

150. Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, toll, fee or rate the Commissioners may sue the person liable to pay the same in any court of competent jurisdiction. [*Cf.* Ben Act III of 1884, s. 129.]

Irrecoverable taxes.

151. The Commissioners may order to be struck off the books the amount of any tax, toll, fee or rate which may appear to them to be irrecoverable. [*Cf.* Ben Act III of 1884, s. 130.]

Certain persons prohibited from purchasing at sales.

152. All Commissioners, municipal officers and servants, and all *chaukidars*, constables and other officers of police are prohibited from purchasing any property at any sale made under this chapter. [*Cf.* Ben Act III of 1884, s. 125.]

Recovery in special cases.

Recovery from occupier of tax due from non-resident owner and deduction from rent.

153. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner is not resident within the municipality, or the place of abode of such owner is unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct from the next and following payments of his rent, the amount which may be so paid by or recovered from him : [*Cf.* Ben Act III of 1884, s. 10a.]

Provided that no arrear of rate shall be so recovered from the occupier of any holding if it has remained due from the owner thereof for more than one year or if it is due on account of any period during which such occupier was not in occupation of such holding :

Provided also that if any such holding is occupied in severalty by more than one person, the sum recovered from any one of such persons shall not exceed such amount as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding. [*Cf.* Ben Act III of 1884, s. 323.]

Recovery by owner from tenant of three-fourths of certain rates.

154. When the owner of a holding has paid water-rate, lighting-rate or conservancy-rate in respect thereof it shall be lawful for him, if there is but one occupying tenant of the entire holding, to recover from such tenant three-fourths of the entire amount of the rate which has been so paid by such owner, and if there is one occupying tenant of a part of the holding or more than one occupying tenant of the holding, then to recover from such tenant or each of such tenants such sum as shall bear to three-fourths of the entire rate paid by the owner the same proportion as the value of the portion of the holding in the occupation of such tenant bears to the entire value of the holding. [*Cf.* Ben. Act III of 1884, ss. 231, 286, 313 and 323.]

Recovery as rent of rate paid by owner.

155. Every owner who, under the provisions of section 154, is entitled to recover any sum from any occupying tenant of any holding or of any portion thereof shall have for the recovery of such sum all such and the same remedies, powers, rights and [*Cf.* Ben. Act III of 1884, ss. 286, 314 and 324.]

(Chapter V.—Municipal taxation.—Clauses 156-157.)

authorities as if such sum were rent payable to such owner by such tenant in respect of so much of such holding as may be in the occupation of such tenant.

The tax on carriages, and on horses and other animals.

Tax on carriages, horses and other animals.

156. (*1*) When it has been determined that a tax on carriages, and on horses and other animals mentioned in Schedule III shall be imposed, the Commissioners at a meeting shall, subject to the provisions of section 157, make an order that the owner of every carriage, and every horse and other animal of the kind mentioned in the said schedule, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the municipality, and is used in the ordinary course of business within it, shall pay the tax at the rate fixed under sub-section (*2*) in respect of such carriage, horse or other animal and they shall cause such order to be published in the manner prescribed. [*Cf* Ben. Act III of 1884, s. 131.]

(*2*) Such order shall be published at least one month before the beginning of the half-year in which such tax will first take effect; and shall specify at what rates, not exceeding the rates given in the said schedule, such tax shall be levied.

(*3*) Such tax shall not be imposed on—

(*a*) horses or ponies belonging to officers doing regimental duty at the rate of one animal for each officer;

(*b*) horses and other means of conveyance exempt from any municipal tax under section 34 of the Auxiliary Force Act, 1920, or under section 16 of the Indian Territorial Force Act, 1920; XLIX of 1920 XLVIII of 1920.

(*c*) carriages or animals belonging to Government or to the Commissioners or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers;

(*d*) animals used by, or exclusively for the purposes of, any regiment;

(*e*) horses or ponies used by police-officers, at the rate of not more than one for each officer;

(*f*) carriages (other than motor-cars, tricycles or bicycles), the wheels of which do not exceed twenty-four inches in diameter; and

(*g*) carriages or animals kept for sale by any *bonâ fide* dealer in such carriages or animals, and not used for any other purpose.

Powers to exempt carriages or class of carriages from taxation.

157. In making an order under section 156 or by a subsequent order, the Commissioners at a meeting may exempt from the tax, imposed under section 156, any carriage or class of carriages mentioned in Schedule III. [New.]

(*Chapter V.—Municipal taxation.—Clauses 158—164.*)

Duration of tax.

158. The order of the Commissioners imposing a tax under section 156 shall continue in force until rescinded and the tax shall be levied at the rates specified in the order published as aforesaid, unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year. [*Cf.* Ben. Act III of 1884, s. 132.]

Half-yearly statement of liability and payment of tax.

159. (*1*) In any municipality in which a tax has been imposed under section 156 the owner of every carriage, horse and other animal mentioned in Schedule III shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages, horses and other animals liable to the tax, for which he is bound to take out a license. [*Cf.* Ben. Act III of 1884, s. 133.]

(*2*) Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses and other animals specified in such statement, according to the rates specified in any order for the time being in force under section 156.

Proportionate tax on carriages, etc., acquired during the half-year.

160. If any person acquires possession, at any time after the commencement of any half-year, of any carriage, horse or other animal mentioned in Schedule III, in respect of which no license has been given for such half-year, he shall forward a statement as required under section 159 within one month of the date on which he may have acquired possession thereof and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid. [*Cf.* Ben. Act III of 1884, s. 134.]

Grant of license on payment of tax.

161. (*1*) On receiving the amount of the tax due the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a license for the several carriages, horses and other animals for the period in respect of which the amount is received. [*Cf.* Ben. Act III of 1884, s. 135.]

(*2*) Such license shall be for the current half-year and no longer.

Liability in absence of owner.

162. Whenever the owner of any carriage, horse or other animal who is liable to pay the said tax is not resident within the limits of the municipality to the Commissioners of which the tax is due, the person in whose immediate possession the carriage, horse or other animal is for the time being kept shall pay the tax and take out a license for the same. [*Cf.* Ben. Act III of 1884, s. 136.]

Carriages, etc., not to be kept without a license.

163. No person shall keep, or be in possession of, any carriage, horse or other animal without the license required under this Act. [*Cf.* Ben. Act III of 1884, s. 137.]

Composition with livery stable-keepers.

164. The Commissioners at their discretion may compound for any period not exceeding one year with livery stable-keepers and other persons keeping carriages, horses or other animals for hire for a certain sum to be paid for the carriages, horses or other animals so [*Cf.* Ben. Act III of 1884, s. 138.]

(Chapter V.—Municipal taxation.—Clauses 165—170.)

kept by such persons, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 156 and 158.

Preparation of list of persons licensed.

165. The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year a license has been given, and of the carriages, horses and other animals in respect of which they have paid the tax. [Cf. Ben. Act III of 1884, s. 139.]

Power to inspect stable, etc., and to summon persons liable to the payment of the tax.

166. (*1*) The Commissioners, or any person authorized by them in this behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach-house, or any place wherein they may have reason to believe that there is any carriage, horse or other animal liable to the tax, for which a license has not been taken out. [Cf. Ben. Act III of 1884, s. 140.]

(*2*) The Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses and other animals in respect of which such person is liable to be taxed.

Refund of tax in certain cases.

167. On proof being given to the satisfaction of the Commissioners that a carriage, horse or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse or other animal has not been kept or used in the municipality bears to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such keeping or use of such carriage, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed. [Cf. Ben. Act III of 1884, s. 141.]

Prohibition of double fee.

168. Nothing in sections 156 to 167 shall be deemed to authorize the levy of more than one fee for the same period in respect of any carriage, horse or other animal which is kept or used in the ordinary course of business in more than one municipality. [Cf. Ben. Act III of 1884, s. 141A.]

Meaning of "used in the ordinary course of business."

169. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business, within the meaning of section 156, if it is used on business on an average thrice a week. [Cf. Ben. Act III of 1884, s. 141B.]

The dog tax.

Tax on dogs.

170. (*1*) When it has been determined that a tax on dogs shall be imposed, the Commissioners at a meeting shall, by a notice to be published at least one month before the beginning of the half-year in [New.]

(*Chapter V.—Municipal taxation.—Clauses 171—173.*)

which such a tax is first to take effect, order that every owner of a dog, which is kept within the municipality, shall pay the tax at such rate, not exceeding two rupees per annum for each such dog in his possession, as may be specified in the notice.

(*2*) The Commissioners may, by such order, exempt the owners of any particular class of dogs from payment of the tax.

Application of provisions as to tax on carriages and animals to tax on dogs.

171. The provisions of sections 158, 161 to 163 and 165 to 167 relating to the tax on carriages, horses and other animals shall be applicable to the tax on dogs in the same manner as if a dog were an animal mentioned in Schedule III. [New.]

The registration of carts.

Registration and numbering of carts.

172. (*1*) When it has been determined that a tax on carts shall be imposed, the Commissioners at a meeting may make and publish an order that every cart, which is kept or is used in the ordinary course of business within the municipality, shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such manner as the said Commissioners shall direct: [*Cf.* Ben. Act III of 1884, s. 142.]

Provided always that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

(*2*) This section shall not apply to—

(*a*) carts which are the property of the Government or of the Commissioners;

(*b*) carts which are kept without the limits of the municipality, and are only temporarily and casually used within such limits; and

(*c*) the municipality of Howrah.

(*3*) The registration of carts shall be made and the numbers assigned yearly or half-yearly, on such days as the Commissioners shall notify. [*Cf.* Ben. Act III of 1884, s. 143.]

Fee for registration.

173. The fee payable for each registration under section 172 shall be as follows:— [*Cf.* Ben. Act III of 1884, s. 143.]

(*a*) for every cart propelled by mechanical power twenty-four rupees, if the registration has effect for one year and twelve rupees if the registration has effect for half a year;

(*b*) for every trailer (being a cart) drawn by a cart referred to in clause (*a*) eighteen rupees, if the registration has effect for one year, and nine rupees, if the registration has effect for half a year;

(*c*) for every other cart eight rupees, if the registration has effect for one year and four rupees if the registration has effect for half a year.

(*Chapter V.—Municipal taxation.—Clauses 174—178.*)

Power to increase fees for carts with narrow tyres and rims.

174. Notwithstanding anything contained in section 173 the fee to be paid for the registration of any cart not propelled by mechanical power, any wheel of which has a rim or tyre of less than two inches of width shall, if the registration has effect for one year, be twelve rupees, and if the registration has effect for half a year shall be eight rupees: [New.]

Provided that the Commissioners shall make and publish an order to this effect, and that such order shall not take effect before the expiration of one year from the date of its publication:

Provided also that the Local Government, on the recommendation of the Commissioners at a meeting, may by notification direct that the provisions of this section shall not apply to any municipality named in this behalf in such notification.

Proportionate payment of fee.

175. Any person becoming possessed of any cart which has not been registered for the then current period of registration shall register the same within one month from the date on which he has become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as bears the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person shall have become possessed as aforesaid. [Cf. Ben Act III of 1884, s. 144.]

Transfer of ownership.

176. When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such re-registration. [Cf. Ben Act III of 1884, s. 145.]

Carts not to be kept without being registered and without number.

177. No person shall keep, or be in possession of, a cart not duly registered as required by this Act, nor shall any person, being the owner or driver of any cart, fail to affix thereto the registration number as required by this Act. [Cf. Ben. Act III of 1881, s. 146.]

Seizure and sale of unregistered carts.

178. (*1*) If any person owns or keeps any cart without registering the same as required by this Act, the Commissioners, or any person authorized by them in this behalf, may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods) together with the animals, if any, drawing the same, and all police-officers are required, on the application of the Commissioners, or of any person duly authorized by them in that behalf, to assist in the said seizure. [Cf. Ben Act III of 1881, s. 117.]

(*2*) After such seizure the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such cart and animals, if any, by auction at such place as they may

(*Chapter V.—Municipal taxation.—Clauses 179 180.*)

state in the notice; and, if any registration fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(*3*) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction:

Provided that, if at any time before the sale is concluded, the person whose cart and animals, if any, have been seized tenders, to the Commissioners, or to the person authorized by them to sell the property, the amount of all the expenses incurred and the registration fee payable by him, the Commissioners shall forthwith release the property so seized.

(*4*) Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart and animals, if any, seized under this section, may be devoted to the payment of any fine imposed for a breach of the provisions of section 177; and any property which has been seized under this section may be sold for the realization of any such fine.

Carts used or registered in more than one municipality.

179. (*1*) Nothing in sections 172 to 178 shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality. [Cf. Ben. Act III of 1884, s. 147A.]

(*2*) When carts not kept within any municipality are so used in more than one municipality, the Local Government may, if they think fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

(*3*) Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality:

Provided that such right is claimed by notice to the other municipality or municipalities concerned within two months of the date on which the fee becomes due.

(*4*) Where any dispute arises between the Commissioners of any two or more municipalities regarding any claim made under sub-section (*3*) of this section the matter shall be referred to the decision of the Local Government and the decision of the Local Government shall be final.

Meaning of "used in the ordinary course of business."

180. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 172 to 179, if it is used on business on an average twice a week. [Cf. Ben Act III of 1884, s. 147B.]

(*Chapter V.—Municipal Taxation.—Clauses 181—185.*)

Tolls on ferries.

Ferries may be declared to be municipal.

181. The Commissioners may, with the sanction of the Local Government, declare that any ferry within, or adjacent to, the limits of the municipality is a municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the Municipal Fund: [Cf. Ben. Act III of 1884, s. 149.]

Provided that due compensation shall be made by the Commissioners to any person for the loss which he may have sustained in consequence of such ferry being declared to be a municipal ferry.

The amount of compensation due in such cases shall be ascertained and awarded by the magistrate under the provisions of section 17 of the Bengal Ferries Act, 1885, or any similar law for the time being in force. [Cf. Ben. Act I of 1885.]

Duties of Commissioners in regard to such ferries.

182. Every municipal ferry shall be maintained by the Commissioners, and they shall do all things necessary to provide for the safety and convenience of travellers, and the safety of property to be conveyed on such ferry. [Cf. Ben. Act III of 1884, s. 150.]

Rate of tolls to be established and published.

183. When it has been determined to impose tolls on municipal ferries, the Commissioners at a meeting shall from time to time make and publish an order specifying the ferries and, with the sanction of the Commissioner of the Division, the rates at which such toll shall be levied. [Cf. Ben. Act III of 1884, s. 151.]

When persons crossing river not liable to toll.

184. No person shall be liable to pay any toll for crossing any river or stream at or near a municipal ferry, unless he avails himself of the means provided by the Commissioners for crossing such river or stream. [Cf. Ben. Act III of 1884, s. 152.]

Cancellation of ferry lease, etc.

185. Every lease of a ferry given by the Commissioners as hereinafter provided shall be liable to be cancelled at once, if it shall appear to the Commissioners at a meeting that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from the Commissioners. [Cf. Ben. Act III of 1884, s. 153.]

On the cancelment of a lease the Commissioners may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until they can make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances:

Provided that within a week of taking such possession, the Commissioners shall be bound to give notice to the said lessee of their intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

(*Chapter V.—Municipal taxation.—Clauses 186—190.*)

Toll must be prepaid

186. Any collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a municipal ferry until the proper toll has been paid, and may require any person who refuses to pay the toll to leave the boat and to remove his goods from it. [*Cf.* Ben. Act III of 1884, s. 154.]

Keeping of unauthorized ferry.

187. No person shall keep a ferry-boat for the purpose of plying for hire within a distance of two miles above or below any municipal ferry without the previous sanction— [*Cf.* Ben. Act III of 1884, s. 155.]

(*i*) of the Commissioners, if he plies within the limits of the municipality,

(*ii*) of the Magistrate of the district, if he plies without such limits, or

(*iii*) of the Magistrate of the district and the Commissioners, if one of the two banks between which he plies is within, and the other bank is without, such limits.

This section shall not apply to any private ferry which has been in existence at the commencement of the Bengal Municipal Act, 1884.

Tolls on Bridges.

Existing toll-bars

188. The Local Government may, with the consent of the Commissioners at a meeting, make over to the Commissioners any existing toll-bar on a bridge within the limits of the municipality, to be administered by them until the Local Government shall otherwise direct; every toll-bar, while so administered shall be deemed to be a municipal toll-bar, and the profits derivable therefrom, or such parts thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund. [*Cf.* Ben. Act III of 1884, s. 157.]

Commissioners may establish toll-bar.

189. The Commissioners at a meeting, with the sanction of the Local Government, may establish a toll-bar and levy tolls on any bridge which they may have constructed after the commencement of the Bengal Municipal Act, 1884, or at any place within the municipality adjacent to such bridge at which tolls may conveniently be levied on carriages, carts and animals passing over such bridge; and the profits derivable therefrom shall be carried to the credit of the Municipal Fund [*Cf.* Ben Act III of 1884, s. 158.]

Provided that no such toll-bar shall be established, or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge and in maintaining such bridge in repair for the five years next after the construction thereof, together with interest on such expenses as hereinafter provided.

Commissioners to publish expenses, etc., of toll-bars.

190. Whenever a toll-bar shall have been established, and tolls shall be levied, as provided in section 189, the Commissioners shall at the end of [*Cf.* Ben. Act III of 1884, s. 159.]

(*Chapter V.—Municipal taxation.—Clauses 191—194.*)

each year publish, by causing it to be posted up at their office, an abstract account showing—

(*i*) the amount of expenses incurred in the construction of such bridge and in the maintenance of the same;

(*ii*) the amount of interest which has accrued due thereon, at the annual rate of *six per centum*; and

(*iii*) the amount which has been received from the profits of the said toll-bar since its establishment.

And, as soon as such expenses and interest shall have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied on such bridge.

Rates of tolls be established and published.

191. When it has been determined that tolls shall be levied on any such bridge, the Commissioners at a meeting shall from time to time make and publish an order, with the sanction of the Commissioner of the Division, specifying rates at which such tolls shall be levied. [*Cf.* Ben Act III of 1884, s. 160.]

Power of collector lessee in case of refusal to pay toll

192. Any collector or lessee of tolls may refuse to allow any person to pass through any municipal toll-bar until the proper toll has been paid. [*Cf.* Ben Act III of 1884, s 161.]

Penalty or refusing to pay or avoiding payment of toll.

193. No person shall drive any carriage, cart or animal (not exempted from toll) through a toll-gate, refuse to pay the toll, or with intent to evade payment of the toll, fraudulently avoid passing through such toll-gate as provided in this Act. [*Cf.* Ben. Act III of 1884, s 162.]

In case of non-payment of toll, vehicle, etc., may be seized and sold.

194. (*1*) If the toll due on any carriage, cart or animal is not paid on demand, the person authorized to collect the same may seize such carriage, cart or animal, or any part of its load of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners. [*Cf.* Ben Act III of 1884, 163.]

(*2*) After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice; and if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property seized, for discharge of the toll, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(*3*) If the load or sufficient part thereof consists of articles which are subject to speedy and natural decay or consists of livestock, that load or part thereof, may forthwith be sold under orders of the Commissioners.

(*4*) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction:

Provided that, if at any time before the sale has been concluded, the person whose property has been

(Chapter V.—Municipal taxation.—Clauses 195—198.)

seized shall tender to the Commissioners, or to the officer appointed by them to sell the property, the amount of all the expenses incurred and of the toll payable, the Commissioners shall forthwith release the property seized.

(5) Notwithstanding anything contained in this section, the surplus of the sale-proceeds of any property seized under this section may be devoted to the payment of any fine imposed under section 193; and any property which has been seized under this section may be sold for the realization of any such fine.

General provisions relating to tolls on ferries and bridges.

Lease of ferry or toll-bar.

195. The Commissioners at a meeting may grant a lease of any municipal ferry or toll-bar for any period not exceeding three years. [Cf. Ben. Act III of 1884, s. 164.]

Table of tolls to be hung up.

196. A table of tolls legibly written in Bengali shall be hung up by the toll collector or lessee of the municipal ferry or toll-bar [Cf. Ben. Act III of 1884, s. 165.]

in some conspicuous position at each end of every municipal ferry, and

in some conspicuous position near every municipal toll-bar,

so as to be easily read by all persons required to pay the toll.

Composition in respect of tolls.

197. The Commissioners, or the lessee of any municipal ferry or toll-bar, may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the ordinary toll payable. [Cf. Ben. Act III of 1884, s. 167.]

Exemptions.

198. (1) No tolls shall be paid for the passage of Government stores or the persons in charge of them; [Cf. Ben. Act III of 1884, s. 168.]

or of police-officers, or of any public or municipal officer on duty, or of any person in their custody, or of any property belonging to them or in their custody, or of any carriage, cart or animal employed by such persons for the transport of such property;

or of conservancy carts or other carriages, carts or animals belonging to the Commissioners or of the persons in charge of them:

Provided that tolls shall be leviable for conveying such animals over a ferry.

(2) The Commissioners or their lessees shall not be bound to allow any person or thing not specified in sub-section (1) to cross a ferry or to pass a toll-gate without payment of the proper toll:

Provided that the Commissioners at a meeting may from time to time exempt any class of persons or things not specified in sub-section (1) from payment of the said toll; and in granting a lease of any ferry or toll-bar may stipulate that any municipal servants and property and any other persons or things shall be allowed to pass without payment of the toll.

(*Chapter V.—Municipal taxation.—Clauses 199—203.*)

Police-officers to assist.

199. In all cases of resistance to the person authorized to collect tolls, police-officers shall assist, when required, and for that purpose shall have the same powers as they have in the exercise of their ordinary police duties. [*Cf.* Ben. Act III of 1884, s. 169.]

Penalty for taking unauthorized tolls.

200. No person who is authorized under this Act to collect tolls shall demand or take any higher tolls than the tolls authorized under this Act. [*Cf.* Ben. Act III of 1884, s. 170.]

Commissioners may be appointed to collect tolls in a navigable channel.

201. If the Local Government has declared that the provisions of the Canals Act, 1864, or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a municipality, it may, with the consent of the Commissioners at a meeting, appoint the Commissioners to collect tolls, as provided in section 8 of the said Act, until the Local Government shall otherwise direct; and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall thenceforward be carried to the credit of the Municipal Fund. [*Cf.* Ben. Act III of 1884, s. 171.]

In such case the Commissioners shall exercise all the powers vested by such Act in the Collector.

Local Government may order Commissioners to cease levying tolls.

202. The Local Government may at any time order that the Commissioners, or any person authorized by them, shall cease to levy any tolls under section 201 and may at any time withdraw such order. [*Cf.* Ben. Act III of 1884, s. 172.]

Rules.

Power to make rules as to taxation.

203. The Local Government may make rules— [New.]

(*a*) prescribing the qualifications of, and the procedure to be followed by, an assessor of municipal taxes appointed under this Act;

(*b*) prescribing the form of notices under section 135, of notices of demand under sub-section (*2*) of section 143, of warrants under sub-section (*1*) of section 145, and returns of sales under sub-section (*3*) of section 147;

(*c*) fixing the fees payable upon distraint under this Act; [*Cf.* Ben. Act III of 1884, s. 121, and Fourth Schedule.]

(*d*) prescribing the conditions and limitations under which a water-rate or lighting-rate may be imposed under the proviso to clause (*a*) of sub-section (*1*) of section 113;

(*e*) prescribing the conditions and limitations under which a tax on the trades, professions, and callings specified in Schedule IV may be imposed and licenses may be granted for the purposes of such tax; and

(*f*) regulating any other matter relating to taxes, tolls, fees or rates in respect of which this Act makes no provision or insufficient provision, and for which provision is, in the opinion of the Local Government, necessary, or which is directed to be prescribed. [*Cf.* U. P. Act II of 1916, s. 153(*f*).]

CHAPTER VI.

Streets.

General.

Certain provisions relating to streets to be applied only to certain municipalities.

204. The provisions contained in sections 205 to 208 and in sections 211 to 218 shall not apply to any municipality, unless and until they have been expressly extended thereto by the Local Government on application of the Commissioners at a meeting. [New.]

Building-lines and street alignments for public streets.

Power to Commissioners to prescribe building-line and street alignment.

205. (1) If the Commissioners at a meeting consider it expedient to prescribe for any public street a building-line or a street alignment, or both a building-line and a street alignment, they shall give public notice of their intention to do so: [Cf. C. M. Act, s. 302.]

Provided that no building-line shall ordinarily be prescribed for any street laid out and made before the commencement of this Act.

(2) Every such notice shall specify a period within which objections will be received, and a copy of such notice shall be sent by post to every owner of premises abutting on such street who is registered in respect of such premises on the books of the municipality:

Provided that failure or omission to serve such notice on any owner shall not invalidate proceedings under this section.

(3) The Commissioners shall consider all objections received within the said period and shall hear any objector who comes forward within such period as they may fix in this behalf, and may then make an order prescribing a building-line or a street alignment, or both a building-line and a street alignment, for such public street.

A register or book with plans attached shall be kept by the Commissioners showing all public streets in respect of which a building-line or street alignment has been prescribed, and such register shall contain such particulars as to the Commissioners may appear to be necessary and shall be open to inspection by any person upon payment of such fee as may from time to time be fixed by the Commissioners at a meeting.

(4) A building-line shall not be prescribed so as to extend further back than the main front wall of any building (other than a boundary wall) abutting on the street at its widest part.

(5) Every order made under sub-section (3) shall be published in the *Calcutta Gazette*, and shall take effect from the date of such publication.

Restrictions on erection of, or addition to, buildings or walls within street alignment or building-line.

206. (1) No portion of any building or boundary wall shall be erected or added to within a street alignment prescribed under section 205: [Cf. C. M. Act, s. 303.]

Provided that the Commissioners at a meeting may, in their discretion, permit additions to a building to be made within a street alignment, if such additions merely add to the height of, and rest upon, an existing

(*Chapter VI.—Streets.—Clause 207.*)

building or wall, upon the owner of the building executing, if required to do so by the Commissioners, an agreement binding himself and his successors in interest—

(*a*) not to claim compensation in the event of the Commissioners at any time thereafter calling upon him or such successors, by written notice, to remove any addition made to any building in pursuance of such permission, or any portion thereof, and

(*b*) to pay the expenses of such removal.

(*2*) If the Commissioners refuse to grant the permission applied for to add to any building on the ground that the proposed site falls wholly or in part within a street alignment prescribed under section 205 and if such site, or the portion thereof which falls within such alignment, be not acquired by the Commissioners, within six months after the date of such refusal, they shall pay reasonable compensation to the owner of the site.

(*3*) No person shall erect or add to any building between a street alignment and the building-line without first obtaining the permission of the Commissioners at a meeting to do so:

Provided that it shall not be necessary to obtain permission under this sub-section to erect, between a street alignment and the building-line,—

(*a*) a porch or balcony, or,

(*b*) along not more than one-third of the frontage, an outhouse not exceeding fifteen feet in height.

(*4*) If the Commissioners grant permission under sub-section (*3*), they may require the applicant to execute an agreement in accordance with the proviso to sub-section (*1*).

Power to Commissioners to take possession of, and add to street, land situated within prescribed street alignment or covered by projecting buildings.

207. (*1*) The Commissioners may at any time after notice to the owner of the land of their intention take possession of— [*Cf.* C. M. Act, s. 304; Ben. Act III of 1884, s. 206.]

(*a*) any land (abutting on a public street) upon which any portion of any building or wall, projecting beyond the front of the adjoining building or wall, which is on either side of such first-mentioned building or wall, has collapsed or been demolished or burnt down, and

(*b*) any land not covered by buildings (including land on which a building has collapsed or been demolished or burnt down) which is situated within a street alignment prescribed under section 205,

after making full compensation to the owner thereof for any direct damage which he may sustain thereby and shall take possession of any land, as specified in clause (*b*), if the owner thereof calls upon them to do so.

(*2*) Any land taken possession of under sub-section (*1*) shall forthwith be added to and become part of the said street, and shall vest in the Commissioners.

Explanation.—The expression "direct damage," as used in sub-section (*1*) with reference to land, means the market-value of the land taken and the depreciation, if any, in the ordinary market-value of the rest of the land resulting from the area being reduced in size; but does not include damage due to any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the site.

(*Chapter VI.—Streets.—Clauses 208—210.*)

Power to Commissioners to set buildings forward to improve line of public street.

208. The Commissioners at a meeting may, upon such terms as they think fit, allow any building or wall to be set forward for the purpose of improving the line of a public street. [*Cf.* C. M. Act, s. 305.]

Opening, improvement and closing of public streets, squares and gardens.

Power to Commissioners to make, improve and close public streets, squares and gardens.

209. The Commissioners in pursuance of a decision arrived at at a meeting may— [*Cf.* C. M. Act, s. 306.]

(*a*) lay out and make new streets, squares and gardens;

(*b*) construct new bridges, causeways, culverts and sub-ways;

(*c*) turn, divert, or temporarily or permanently close any public street or part thereof, or permanently close any public square or garden;

(*d*) widen, open, enlarge, or otherwise improve any public street, square or garden;

(*e*) provide within their discretion building sites of such dimensions as they think fit to abut on, adjoin or obtain access from any public street made, widened, lengthened, extended, enlarged or improved by the Commissioners under clauses (*a*), (*b*), (*c*) or (*d*) or by the Local Government; [*Cf.* U. P Act II of 1916, s. 219 (*d*); Bom. Act III of 1901, s. 269.] [*Cf.* *supra*, ss. 80-81.]

(*f*) subject to the provisions of any rule made by the Local Government, and prescribing the conditions on which land may be acquired for the Commissioners, obtain, through the Local Government the acquisition of any land, along with the buildings thereon, which they consider necessary for the purposes of any scheme or work undertaken or projected in exercise of the powers conferred by the preceding clauses including purposes of recoupment of the cost of any such scheme or work; and

(*g*) subject to the provisions of any rule made by the Local Government, and prescribing the conditions on which land vested in the Commissioners may be transferred, lease, sell or otherwise dispose of any land acquired for the Commissioners under clause (*f*) or any buildings erected thereon or any land used by the Commissioners for a public street, and in doing so impose any condition as to the description of any building to be erected thereon, as to the period within which such building shall be completed, as to the removal of any building existing thereon and as to any other matter that they deem fit.

Power to Commissioners to dispose of so much of a permanently closed street, square or garden as is not required.

210. (*1*) When any public street, or part thereof, or any public square or garden, is permanently closed under section 209, the Commissioners, in pursuance of a decision arrived at at a meeting may sell or lease the site of so much of the road-way and foot-path as is no longer required, or the site of the square or garden, as the case may be, making due compensation to, or providing means of access for, any person who may suffer damage by such closing. [*Cf.* C. M. Act, s. 307.]

(*Chapter VI.—Streets.—Clauses 211—213.*)

(*2*) In determining such compensation allowance shall be made for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street, square or garden at or about the same time that the public street, square or garden on account of which the compensation is paid is closed.

Projected public streets.

Projected public streets.

211. (*1*) The Commissioners at a meeting may from time to time prepare schemes and plans of projected public streets, showing the direction of such streets, the street alignment and building-line on each side of them, their intended width and such other details as may appear desirable. [*Cf.* C. M. Act, s. 308.]

(*2*) The width of such projected streets, inclusive of space for foot-paths, shall not be less than forty feet or, in a *bustee*, twenty feet:

Provided that—

(*a*) the Commissioners at a meeting may for special reasons reduce the width of any projected street but not so as to be less than thirty feet or, in a *bustee*, sixteen feet; and

(*b*) this sub-section shall not apply in any case in which the projected street, or any part thereof, runs along an existing street and the Commissioners consider it impracticable to widen the street to the extent of forty feet or twenty feet, as the case may be.

Provisions of section 206 to apply to projected public streets.

212. The provisions of section 206 shall, with all necessary modifications, apply to public streets projected under section 211. [*Cf.* C. M. Act, s. 309.]

Special provisions as to private streets.

Making of new private streets.

213. (*1*) Any person intending to make or lay out a new private street shall send to the Commissioners a written notice, with plans and sections, showing the following particulars of the proposed street, namely:— [*Cf.* C. M. Act, s. 314.]

(*a*) the level, width and alignment thereof, and

(*b*) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining and lighting the street.

(*2*) The provisions of this Act as to the width of public streets and the height of buildings abutting thereon, and as to projected public streets, shall respectively apply in the case of streets referred to in sub-section (*1*); and all the particulars referred to in that sub-section shall be subject to approval by the Commissioners at a meeting:

Provided that the Commissioners at a meeting may allow a private street to be made or laid out of a width less than forty feet but not less than twenty feet, and, if the street is less than two hundred feet in length, the maximum width of such street may ordinarily be taken to be thirty feet instead of forty feet.

(*Chapter VI.—Streets.—Clauses 214—216.*)

(*3*) Within ninety days after the receipt of any notice under sub-section (*1*) the Commissioners at a meeting shall either sanction the making of the street, or disallow it, or ask for further information with respect to such street.

(*4*) Such sanction may be refused—

(*i*) if the proposed street would conflict with any arrangements which have been made, or which are in the opinion of the Commissioners likely to be made within a reasonable period, for carrying out any general scheme of street improvement, or

(*ii*) if the proposed street does not conform to the provisions of this Act referred to in sub-section (*2*), or

(*iii*) if the proposed street is not designed so as to connect at one end with a street which is already open.

(*5*) If further information is asked for under sub-section (*3*), no steps shall be taken to make or lay out the street until orders have been passed upon receipt of such information, and such orders shall be passed within ninety days of the receipt of such further information.

(*6*) If within ninety days after the receipt of any notice under sub-section (*1*), or within ninety days after the receipt of any further information asked for under sub-section (*3*), the Commissioners have not refused sanction to the making of the private street, it shall be deemed that sanction to the same has been granted.

Owner's obligation to make a street when disposing of land as building sites.

214. If the owner of any land utilizes, sells, leases or otherwise disposes of such land or any portion or portions of the same as sites for the construction of buildings he shall, except in the case of a site or sites abutting on an existing public or private street, lay down and make a street or streets giving access to the site or sites and connecting with an existing public or private street. [*Cf.* Mad Act V of 1920, s. 175.]

Prohibition of breach of section 213.

215. Except as provided in sub-section (*6*) of section 213, no person shall make or lay out any street referred to in sub-section (*1*) of section 213— [*Cf.* C. M. Act, s. 315.]

(*a*) until he has obtained the sanction of the Commissioners under that section, or

(*b*) in contravention of any orders made thereunder.

Alteration or demolition of street made in breach of section 213.

216. (*1*) If any person makes or lays out any street referred to in sub-section (*1*) of section 213, without having obtained the sanction of the Commissioners under that section, or in contravention of any orders made thereunder, the Commissioners may, whether or not the offender be prosecuted under this Act, by written notice,— [*Cf.* C. M. Act, s. 316.]

(*a*) require the offender to show sufficient cause, by a written statement signed by him and sent to the Commissioners on or before such day as may be specified in the notice, why such street should not be altered to their satisfaction or, if such alteration be impracticable, why such street should not be demolished, or

(*Chapter VI.—Streets.—Clauses 217—219.*)

(*b*) require the offender to appear before them, either personally or by a duly authorized agent, on such day and at such time and place as may be specified in the notice, and show cause as aforesaid.

(*2*) If any person on whom such notice is served fails to show sufficient cause, to the satisfaction of the Commissioners, why such street should not be so altered or demolished, they may cause the street to be so altered or demolished, and the expenses thereof shall be paid by such person.

Levelling, etc., of private streets.

217. (*1*) If any private street or any part thereof be not levelled, paved, metalled, flagged, channelled, sewered, drained or lighted to the satisfaction of the Commissioners, they may, by written notice to the owner of such private street or the respective owners of the land fronting, adjoining or abutting upon such street or part, as the case may be, from time to time require them to level, pave, metal, flag, channel, sewer, drain or light such street or part. [*Cf.* C. M. Act, s. 317.]

(*2*) If such notice be not complied with and the Commissioners, under sub-section (*2*) of section 500, execute the works mentioned or referred to therein, the expenses thereby incurred shall be paid by the owner of such private street or the owners in default, in such proportion as may be settled—

(*a*) by the Commissioners at a meeting, or
(*b*) in case of dispute, by the Commissioner of the Division.

Power to Commissioners to take over private streets.

218. If any private street which conforms to the provisions of this Act referred to in sub-section (*2*) of section 213 be levelled, paved, metalled, flagged, channelled, sewered, drained and lighted to the satisfaction of the Commissioners, and if a majority of— [*Cf.* C. M. Act, s 318]

(*a*) the owners of land or buildings in such street, or
(*b*) the owners of the street, or
(*c*) the owners who have paid the expenses referred to in sub-section (*2*) of section 217,

signify in writing their consent thereto, the Commissioners at a meeting shall declare the same, by written notice put up in any part of such street, to be a public street, and thereupon the same shall become a public street and shall vest in the Commissioners:

Provided that, where a private street has been in existence for not less than thirty years and is used by the people of the locality as a thoroughfare, the Commissioners at a meeting may declare such street to be a public street, even though it does not strictly comply with the provisions of this chapter, if—

(*a*) the owners of the lands and buildings in such street, or
(*b*) the owners of the street,

signify in writing their consent thereto.

Supplemental provision for regulating and protecting streets.

Duties of Commissioners when constructing public streets, etc.

219. (*1*) The Commissioners shall, during the construction or repair of a public street or of any water-works, drain or premises vested in them, or whenever any public street, water-works, drain or [*Cf.* Ben. Act III of 1884, s. 201 U. P. Act II of 1916, s. 228.]

(*Chapter VI.—Streets.—Clauses 220—222.*)

premises vested in them have, for want of repairs or otherwise, become unsafe for use by the public, take all necessary precautions against accident by—

(*a*) shoring up and protecting adjacent buildings, and

(*b*) fixing bars, chains, posts or other barriers across or in any street for the purpose of preventing or diverting traffic during such construction or repair, and

(*c*) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

(*2*) No person shall, without the authority or consent of the Commissioners, in any way interfere with any arrangement or construction made by the Commissioners under sub-section (*1*) for guarding against accident.

Hoardings to be set up during repairs.

220. (*1*) Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public street will be obstructed or rendered inconvenient or dangerous by means of such work, before beginning the same, cause hoardings or fences to be put up to the satisfaction of the Commissioners in order to separate the house where such works are being carried on from the street, and shall keep such hoardings or fences standing and in good condition, to the satisfaction of the Commissioners during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night: [*Cf.* Ben. Act III of 1884, s. 235.]

Provided that, no person shall put up a hoarding or fence without the written permission of the Commissioners, nor shall he keep up the said hoarding or fence for a time longer than allowed in the said written permission.

(*2*) Any person who contravenes the provisions of sub-section (*1*) or who, without written permission erects or sets up any hoarding, scaffolding or fence whatsoever, or who, being permitted, fails to put up such hoarding, scaffolding or fence or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoarding or fence is standing, keep the same sufficiently lighted during the night; or who does not remove the same within eight days when directed by the Commissioners, shall be liable to fine as provided in this Act. [*Cf.* Ben. Act III of 1884, s. 278 (*1*).]

Leave to deposit materials temporarily on, or to excavate or close, a street.

221. The Commissioners may grant permission to any person, for such period and on such conditions as they may think fit, to deposit any movable property on any public street, or to make an excavation in any public street, or to enclose the whole or any part of any street, and may charge such fees as they may fix for such permission: [*Cf.* Ben. Act III of 1884, s. 234.]

Provided that such person shall make due provision for the passage of the public and shall erect sufficient fences to protect the public from injury, danger or annoyance, and shall light such fences from sunset to sunrise sufficiently for such purpose.

Power to close a street or part of a street for repairs or other public purpose.

222. The Commissioners may close temporarily any public street or part thereof for the purpose of repairing such street, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other public purpose: [*Cf.* Ben. Act III of 1884, s. 201.]

(Chapter VI.—Streets.—Clauses 223—225.)

Provided that the Commissioners so closing any street shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such street.

Sanction of Commissioners to projection over streets and drains.

223. (*1*) No person shall put up any verandah, balcony, sunshade, weather-frame or the like to project over any public street without the written permission of the Commissioners. [*Cf.* U. P. Act II of 1916, s. 209; C. M. Act, Sch. XVI, s. 2.]

(*2*) Subject to any rules made by the Local Government prescribing the conditions for the sanction by the Commissioners of projections over public streets or drains, the Commissioners at a meeting may, in their discretion, give written permission on such conditions as they may think fit, and, on payment of such fees or rent as they may from time to time fix, to the owners or occupiers of buildings abutting on public streets to erect or re-erect verandahs, balconies, sunshades, weather-frames and the like, whether supported by pillars or not, to project from any building over a street or a drain in a street from any upper storey thereof, at such height from the surface of the street and to such an extent beyond the line of the plinth or basement wall as are specified in by-laws to be framed under section 232.

(*3*) In giving permission under sub-section (*2*), the Commissioners may prescribe the extent to which, and the conditions under which, any roofs, eaves, weather-boards, shop-boards and the like may be allowed to project over such streets.

(*4*) At any time after any permission has been given under sub-section (*2*), the Commissioners at a meeting may, by written notice, require the owner or occupier of the building to remove the projection referred to in such permission and the owner or occupier shall be entitled to reasonable compensation out of the Municipal Fund for such removal.

Erection of platforms.

224. (*1*) No platform shall be erected, re-erected or extended upon or over any public street or drain without the previous sanction of the Commissioners at a meeting. [*Cf.* U. P. Act II of 1916, s. 209.]

(*2*) The owner of every platform, except platforms which are used for giving such access to the houses as the Commissioners may consider necessary, shall, if the Commissioners at a meeting so direct, take out a license for keeping the platform.

(*3*) Every such license shall remain in force for one year and shall be renewable annually.

(*4*) For every such license there shall be paid a fee to be fixed by the Commissioners at a meeting at a rate of not less than two annas nor more than eight annas for each square foot of the superficial area of the platform except such portion thereof as is used for giving such access to a house as the Commissioners may consider necessary.

Removal of fallen house, etc., obstructing street or drain.

225. Whenever any building, wall, revetment or other erection or any part thereof, or any tree, stone, soil or *débris* from private premises falls down and obstructs or encumbers any public street or drain, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners may seem fit. [*Cf.* Ben. Act III of 1884, s. 207.]

(Chapter VI.—Streets.—Clauses 226—228.)

Penalty for cutting street.

226. (*1*) No person shall, without the consent of the Commissioners, dig or cut up a public street in order to provide for the passage of water or for any other purpose. [Cf. Ben. Act III of 1884, s. 269.]

(*2*) Whoever contravenes the provisions of this section shall, in addition to any other penalty imposed under this Act, be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public street.

Regulation of troughs and rain water pipes affecting a street.

227. The Commissioners may, by notice, require the owner or occupier of any building or land abutting on a street to put up and keep in good condition proper troughs and pipes for receiving and carrying off the water from the building or land, and for discharging the same in such manner as the Commissioners may think fit, so as not to inconvenience persons passing along the street. [Cf. U. P. Act II of 1916, s. 216.]

Notice to remove encroachments over house-gullies, etc.

228. (*1*) The Commissioners— [Cf. Ben. Act III of 1884, ss. 202 and 217.]

(*a*) may issue a notice requiring any person to remove any wall, hoarding, scaffolding, fence, rail, post, platform or other projection, obstruction, or encroachment (not being a portion of a building or a fixture referred to in section 229) which he may have erected or set up in, over, above, or upon any house-gully, or any public street, sewer, drain, aqueduct, watercourse or *ghât*, or which remains so erected or set up when the period covered by any permission given in its behalf has expired; and

(*b*) may, themselves or by any officer authorized by them in this behalf, remove without notice any materials or goods or any movable property, which has, without their permission, been deposited in a public street or in, over, above, or upon any house-gully, or any public sewer, drain, aqueduct, watercourse or *ghât*, or which remains so deposited, when the period covered by any permission given in this behalf has expired, whether or not the offender be prosecuted under this Act or any rules or by-laws made thereunder, and the offender shall be liable to pay the expense of such removal.

(*2*) If the person who erected or set up any of the projections, obstructions or encroachments referred to in clause (*a*) of sub-section (*1*) is not known or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said projection, obstruction or encroachment, requiring any person interested in the same to remove it, and it shall not be necessary to name any person in such requisition. [Cf. Ben. Act III of 1884, s. 203.]

(*3*) Notwithstanding any prosecution which may be instituted, if the person on whom a notice has been issued under clause (*a*) of sub-section (*1*) fails to comply with the requisition within the period specified in the notice,

(*Chapter VI.—Streets.—Clause 229.*)

or if where a notice has been posted up under sub-section (*2*) the projection, obstruction or encroachment is not removed within the period specified in such notice,

the Magistrate may, on the application of the Commissioners, order that the projection, obstruction or encroachment be removed, and thereupon the Commissioners may, notwithstanding anything contained in sections 500 to 504, remove such projection, obstruction or encroachment,

and the expenses thereby incurred shall be recovered from the person who erected or set up the same or by the sale of the materials removed.

(*4*) No person shall be entitled to compensation in respect of the removal of any projection, obstruction or encroachment under this section.

Power to Commissioners to remove or alter verandah, etc., or fixtures attached to building which project, etc., over public street or land.

229. (*1*) When any verandah, platform or other similar structure or any fixture attached to a building so as to form part of the building, whether erected before or after the commencement of this Act, causes a projection, encroachment or obstruction over or on any house-gully or public street or any land vested in the Commissioners they may, by written notice, require the owner or occupier of the building to remove or alter such structure or fixture. [*Cf.* C. M. Act, s. 299 Ben. Act III of 1884, ss. 204 and 283.]

(*2*) If the expense of removing or altering any such structure or fixture is paid by the occupier of the building in any case in which the same was not erected by himself, he shall be entitled to deduct any reasonable expense incurred for the purposes of such removal or alteration from the rent payable by him to the owner of the building.

(*3*) If the person on whom a notice is issued under sub-section (*1*) fails to comply with the requisition within the period specified therein, the Magistrate may, on the application of the Commissioners, order that such structure or fixture be removed or altered, and thereupon the Commissioners may carry into effect the order of the Magistrate, and recover from the owner or occupier of the building the cost thereby incurred:

Provided that if the owner or occupier proves that any such structure or fixture was erected before the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality or in the case of a municipality constituted under the Bengal Municipal Act, 1884, in which none of the aforesaid Acts was in force prior to the commencement of that Act, before the date of the constitution of that municipality, or, in the case of a municipality constituted after the commencement of this Act, before the date of the constitution of that municipality, the Magistrate shall order reasonable compensation to be paid to any person who suffers damage by the removal or alteration thereof. [Ben. Act III of 1864. Ben. Act VI of 1868. Ben. Act V of 1876. Ben. Act III of 1884.]

In determining the amount of compensation, the value of the land shall not be taken into consideration.

(*Chapter VI.—Streets.—Clauses—230—232.*)

Commissioners may require land-holders to trim hedges, etc.

230. The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges thereon bordering on any public street or drain and to cut and trim any trees thereon overhanging any public street or drain or tank or any well used for drinking purposes, or obstructing any public street or drain or any property of the Commissioners, or likely to cause damage to any person using any public street, or fouling or likely to foul the water of any well or tank. [*Cf.* Ben. Act III of 1884, s. 208.]

Names of streets and numbers of houses.

231. (*1*) The Commissioners at a meeting may cause a name to be given to any public street or square and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house; and in like manner may, from time to time, cause such names and numbers to be altered. [*Cf.* Ben. Act III of 1884, s. 215.]

(*2*) No person shall destroy, pull down, deface or alter any name or number put up by the Commissioners under the authority of sub-section (*1*). [*Cf.* Ben. Act III of 1884, s. 216 (*2*).]

Power to make by-laws.

232. The Commissioners at a meeting may make by-laws — [*Cf.* Ben. Act III of 1884, s. 350.]

(*a*) to regulate or prohibit any description of traffic on public streets, and to prevent obstructions, encroachments, or excavations on or near such streets;

(*b*) to prevent, prohibit or regulate the use or occupation of any or all public streets or places by any person for the sale of articles or for the exercise of any calling or for setting up any booth or stall, and to provide for the levy of fees for such use or occupation ; [*Cf.* U. P. Act II of 1916, s. 298E (*b*).]

(*c*) to determine the information and plans to be furnished to the Commissioners under section 213 ; and [*Cf.* U. P. Act II of 1916, s. 298E (*a*).]

(*d*) to regulate the conditions on which permission may be given under section 223 with reference to projections over public streets and drains and to provide for the payment of fees or rent for such user of the streets and drains and to provide for the removal of such projections. [*Cf.* U. P. Act II of 1916, s. 298E (*c*).]

CHAPTER VII.

CONSERVANCY AND DRAINAGE.

Removal of sewage, rubbish and offensive matter.

Duties of Commissioners in relation to conservancy.

233. The Commissioners at a meeting shall provide for the removal— [Cf. Ben. Act III of 1884, ss. 186, 320.]

(a) of sewage, rubbish and offensive matter from all public latrines, urinals and drains, and from all public streets and all other property vested in the Commissioners, and

(b) in any municipality wherein a conservancy rate has been imposed under section 111, of sewage and offensive matter from all private latrines, urinals and cess-pools,

and for the disposal of such sewage, rubbish or offensive matter and for the cleansing of such latrines, urinals, drains and cess-pools, and shall maintain sufficient establishment, animals, carts, sewers, pumps, drains, outfall and disposal works and implements for the said purposes.

Control over night men.

234. (1) The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licenses, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits. [Cf. Ben. Act III of 1884, s. 331.]

The Commissioners at a meeting may grant such licenses subject to such conditions as they may think fit, and may impose fees in respect of the same.

(2) Subject to the approval of the Local Government, the Commissioners at a meeting may make rules to define the duties of such persons, and any breach of such rules shall subject the offender to a forfeiture of license and to a fine as provided in such rules.

Power to prescribe times and manner of removal of sewage, etc.

235. The Commissioners at a meeting may from time to time publish an order prescribing the hours within which and the manner in which sewage, rubbish and offensive matter may be removed. [Cf. Ben. Act III of 1884, s. 187.]

Power of conservancy establishment.

236. All servants of the Commissioners employed for the purposes of this chapter may, within such hours as may be fixed from time to time by the Commissioners at a meeting enter on any premises of which the occupier or owner is liable to pay a conservancy rate, and do all things necessary for the performance of their duties under this chapter. [Cf. Ben. Act III of 1884, s. 330.]

Deposit and removal of sewage, etc., in certain municipalities.

237. In any municipality wherein a conservancy rate has not been imposed, the Commissioners at a meeting may provide places convenient for the deposit of sewage, rubbish and offensive matter and may require the occupiers of houses to cause the same to be deposited daily or at other stated intervals in such places, and may remove the same at the expense of the occupier from any house, if the occupier thereof fails to do so as required by this section. [Cf. Ben. Act III of 1884, s. 187.]

(Chapter VII.—Conservancy and Drainage.—Clauses 238—241.)

Appointed hours for placing rubbish, etc., on public street.

238. (*1*) The Commissioners at a meeting may from time to time publish an order prescribing the hours within which only an occupier of any house or land may place rubbish or offensive matter on the public street adjacent to his house or land in order that such rubbish or offensive matter may be removed by the servants of the Commissioners. [Ben. Act of 1884 s. 189.]

(*2*) No person shall place or allow his servant to place rubbish or offensive matter on a public street at other than the times appointed by the Commissioners under sub-section (*1*). [*Cf.* Ben. Act III of 1884, s. 216.]

Removal of rubbish, etc., from premises.

239. (*1*) The Commissioners at a meeting may contract with the occupier of any premises to remove rubbish or offensive matter direct therefrom and may charge fees in this behalf.

(*2*) When building operations are being carried on in any premises, or when any premises are used for carrying on any manufacture, trade or business, the Commissioners may,— [*Cf.* C. M. Act, s. 373, Ben. Act III of 1884, s. 189.]

(*a*) by written notice, direct the occupier of such premises to collect all rubbish and offensive matter accumulating on such premises in the course of such operations, manufacture, trade or business and to remove the same, at such times, in such carts or receptacles, and by such routes as may be specified in the notice, to a place provided or appointed in this behalf by the Commissioners, or,

(*b*) after giving such occupier written notice of their intention so to do, themselves cause all such rubbish and offensive matter to be removed, and charge such occupier for such removal such periodical fee as they may specify in such notice:

Provided that the requisition under clause (*a*) shall not be enforced by the Commissioners, nor shall action be taken by them under clause (*b*) until the occupier of the premises has been given an opportunity of being heard within such time as may be specified in the written notice that is served on him.

Removal of offensive matter from or near street.

240. No person who, being the occupier of a house in or near a public street shall keep or allow to be kept, for more than twenty-four hours, or for more than such shorter time as may be fixed by the Commissioners at a meeting, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter in or upon such house, or in any outhouse, yard or ground attached to and occupied with such house, nor shall any person suffer such receptacle to be in a filthy or noxious state, or neglect to employ proper means to cleanse the same. [*Cf.* Ben. Act III of 1884, s. 217 (*1*).]

Prohibition of allowing sewage, offensive matter or rubbish to be thrown or run into street or drain thereof.

241. No person shall—

(*i*) throw or put or cause or permit to be thrown or put, any sewage or offensive matter upon any street, or drop, pass or place, or cause to be dropped, passed, or placed, into [*Cf.* Ben. Act III of 1884, s. 279 (*1*) and (*2*), C. M. Act, s. 287 (*d*), (*e*) and (*f*).]

(*Chapter VII.—Conservancy and Drainage.—Clauses 242—245.*)

or in any drain, any brick, stones, earth or ashes or any substance or matter, by which or by reason of the amount of which such drain is likely to be obstructed; or

(*ii*) without the permission of the Commissioners pass, or permit or cause to be passed, into any drain provided for a particular purpose any matter or liquid for the conveyance of which such drain was not provided; or

(*iii*) without the permission of the Commissioners cause or suffer to be discharged into any drain from any factory, bakehouse, distillery, workshop or workplace, or from any building or place in which steam, water or mechanical power is employed, any hot water, steam or fumes, or any liquid which would prejudicially affect the drain or the disposal by sale or otherwise of the sewage conveyed along the drain, or which would, from its temperature or otherwise, be likely to create a nuisance.

Disposal of dead bodies of animals.

242. (*1*) Whenever an animal in the charge of a person dies, otherwise than by being slaughtered either for sale or consumption or for some religious purpose, the person in charge thereof shall, either— [*Cf.* U. P. Act II of 1916, s. 275.]

(*a*) convey the carcass within twenty-four hours to a place (if any) fixed by the Commissioners for the disposal of the dead bodies of animals, or to a place beyond municipal limits not being within one mile of those limits, or

(*b*) give notice of the death within twelve hours to the Commissioners whereupon the Commissioners shall cause the carcass to be disposed of.

(*2*) For the disposal of the carcass under clause (*b*) of sub-section (*1*) the Commissioners may charge such fee as they may determine at a meeting and may recover the same, if not paid in advance, from the owner or person in charge of the animal.

Rubbish deposited to be the property of the Commissioners.

243. All things deposited in places provided or appointed under this chapter for the deposit of sewage, offensive matter, rubbish and carcasses of animals shall be the property of the Commissioners. [*Cf.* Ben. Act III of 1884, s. 196.]

Public latrines.

244. The Commissioners, in pursuance of a decision arrived at at a meeting, shall provide and maintain in sufficient numbers and in proper situations public latrines and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed. [*Cf.* Ben. Act III of 1884, s. 198.]

Power to Commissioners to require privy and other accommodation to be provided in buildings.

245. (*1*) When application is made to erect or materially alter any building— [*Cf.* C. M. Act, ss. 269 and 270.]

(*i*) intended for human habitation, or

(*ii*) at or in which labourers or workmen are to be employed,

the Commissioners may direct that such privy and urinal accommodation shall be provided as they consider to be suitable therefor.

(Chapter VII.—Conservancy and Drainage.—Clauses 246-247.)

(*2*) In directing the provision of any such accommodation the Commissioners may determine in each case—

(*a*) where an underground sewerage system has been provided, whether such building shall be provided with service- or connected-privies or urinals, or partly with one and partly with the other; and

(*b*) what shall be the site or position of each privy or urinal, and their number.

(*3*) When any premises at or in which not less than twenty labourers or workmen are employed are without privy, urinal, bathing or washing place accommodation to the satisfaction of the Commissioners they may, by written notice, require the owner of such premises to provide such privy, urinal or bathing or washing place accommodation as they may prescribe.

Power to Commissioners to require such provision to be made in other cases.

246. (*1*) When any premises intended for human habitation are without privy or urinal accommodation, or if the Commissioners are of opinion that the existing privy or urinal accommodation available for the persons occupying or employed in any premises is insufficient, inefficient, or on any grounds objectionable, the Commissioners may, by written notice, require the owner of such premises— [*Cf.* Ben. Act III of 1884, s. 332; C. M. Act, s. 271.]

(*a*) to provide such, or such additional, privy or urinal accommodation as they may prescribe; or

(*b*) to make such structural or other alterations in the existing privy or urinal accommodation as they may prescribe; or

(*c*) where there is an underground sewerage system to substitute connected-privy or connected-urinal accommodation for any service-privy or service-urinal accommodation:

Provided that where the privy or urinal accommodation of any premises—

(*i*) has been, and is being, used in common by the persons occupying or employed in such premises and any other premises, or

(*ii*) is, in the opinion of the Commissioners, likely to be so used,

the Commissioners may, if they are of opinion that such accommodation is sufficient to admit of the same being used by all the persons occupying or employed in all the said premises, direct in writing that separate privy or urinal accommodation need not be provided on or for such other premises:

Provided also that the Commissioners may, if they are of opinion that there is sufficient public latrine accommodation available for all the persons occupying or employed in any premises, direct that separate privy or urinal accommodation need not be provided for such premises.

(*2*) Any requisition under sub-section (*1*) may comprise any detail specified in sub-section (*2*) of section 245.

Breach of by-laws in regard to house-drain, etc.

247. When by-laws have been framed under section 256 or section 264 no person shall construct, renew, rebuild, remove, obstruct, destroy, or change any house-drain, cess-pool, privy, sink, or urinal or appurtenances thereof, in contravention of any such [*Cf.* Ben. Act III of 1884, s. 272.]

(*Chapter VII.—Conservancy and Drainage.—Clauses 248—250.*)

by-law or of any notice issued or direction given thereunder or without the written permission of the Commissioners at a meeting.

Location of house-drains, privies, etc.

248. No person shall, without the written permission of the Commissioners at a meeting, construct or keep any house-drain, service-privy, urinal or cess-pool within fifty feet of any tank, well, or water-course or any reservoir for the storage of water or construct any privy with a door or trap-door opening into any road or drain.

[Cf. Ben. Act III of 1884, ss. 230, 231, 270, 271.]

Powers of Commissioners to inspect latrines, urinals, etc.

249. (*1*) All latrines, urinals, sinks, cess-pools and drains shall be subject to the control of the Commissioners and the Commissioners or any officer authorized by them in this behalf may inspect any latrine, urinal, cess-pool, sink, drain or receptacle for sewage or offensive matter at any time between sunrise and sunset, after six hours' notice in writing to the occupier of the premises in which such latrine, urinal, cess-pool, sink, drain or receptacle is situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of inspection or of preventing or removing any nuisance arising from such latrine, urinal, cess-pool, sink, drain or receptacle.

[Cf. Ben. Act III of 1884, ss. 190 and 191; U. P. Act II of 1916, s. 270.]

(*2*) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the Commissioners, unless the latrine, urinal, cess-pool, drain or receptacle is found to be in bad order or condition, or to have been constructed in contravention of any provisions of, or made under, this or any other enactment, in which case such expense shall be recovered from the owner or occupier.

Powers of Commissioners to require repair, alteration, removal of latrine, etc.

250. (*1*) The Commissioners may require by notice the owner or occupier of any land or building, within a period to be specified in the notice,

[Cf. U. P. Act II of 1916, s. 267; Ben. Act III of 1884, ss. 192, 231, 225, 224, 229, 266, 270, 271.]

(*a*) to close, remove, alter, repair, disinfect or put in good order any cess-pool, drain or receptacle for sewage, offensive matter or rubbish pertaining to such land or building, to provide to their satisfaction access from a house-gully or lane to any service-privy or service-urinal in or on such land or building or to demolish any privy or urinal constructed, rebuilt or altered in or on such land or building in contravention of section 248 or any by-law framed under section 256 or section 264;

(*b*) to provide such cess-pools, drains or receptacles for sewage, offensive matter or rubbish, as should, in their opinion, be provided for the building or land whether in addition or not to any existing ones; or

(*c*) to cause any latrine or urinal provided for the building or land to be shut off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood.

(*2*) When requiring under sub-section (*1*) anything to be provided, altered or done, the Commissioners may specify in the notice the description of the thing to be provided, the pattern to conform with which the thing is to be altered, and the manner in which the thing is to be done.

(Chapter VII.—Conservancy and Drainage.— Clauses 251—255.)

Powers of Commissioners to require construction of house-gully

251. *(1)* Where a privy or privies belonging to one or more premises are so placed as in the opinion of the Commissioners to afford to the municipal conservancy staff no suitable means of access thereto for the purpose of cleansing such privy or privies, the Commissioners may by written notice to the owner or owners of such privy or privies, require them to provide a house-gully of such dimensions and so paved and drained as they may think necessary for such purpose. [New.]

(2) If such notice be not complied with within the time fixed by the Commissioners, they may themselves acquire land and construct such house-gully, and the expenses thereby incurred shall be paid by the owner in default, and where there is more than one owner, by the owners in such proportion as may be settled—

(a) by the Commissioners at a meeting; or

(b) in case of dispute, by the Commissioner of the Division.

(3) The house-gully after construction shall be deemed to be a private street unless and until it vests in the Commissioners in accordance with the provisions of section 218.

Supply of disinfectants by Commissioners.

252. When, under sub-section *(1)* of section 250, an owner or occupier is required by the Commissioners to use disinfectants the Commissioners may themselves supply disinfectants or deodorants for such use at cost price, and the expense thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of the cess-pool, drain or receptacle, as the case may be, or the Commissioners at a meeting may, if they think fit, order that such expense shall be paid from the Municipal Fund. [*Cf.* Ben. Act III of 1884, s. 192.]

Neglect to keep latrine, etc., in proper order.

253. The owner or occupier of any premises to which any latrine, urinal, cess-pool, drain or other receptacle for sewage or offensive matter pertains, shall keep in a proper state such latrine, urinal, cess-pool, drain or other receptacle: [*Cf.* Ben. Act III of 1884, s. 217.]

Provided that any person who is liable to pay a conservancy-rate shall not be punished with a fine for neglecting or refusing to keep his latrine, urinal or cess-pool in a proper state of cleanliness. [*Cf.* Ben. Act III of 1884, s. 329.]

Scavenging on occasion of fairs and festivals and contribution from persons having control over places of pilgrimage.

254. The Commissioners in pursuance of a decision arrived at at a meeting shall make any special scavenging arrangements that may be necessary on occasions of fairs, festivals or other large assemblies of people, and in the case of such assemblies held in connection with any place of pilgrimage in or within two miles of the municipality, the Commissioners may require the persons having control over such place of pilgrimage to make such contribution as the Local Government may on each such occasion approve towards the cost of such arrangements. [*Cf.* Mad. Act V of 1920, s. 156.]

Power to Commissioners to employ special establishment for removing excessive rubbish or offensive matter.

255. Where in the opinion of the Commissioners at a meeting the accumulation of rubbish or offensive matter on any premises, or the amount of rubbish or offensive matter from any premises deposited on any [*Cf.* Ben. Act III of 1899, s. 420.]

(*Chapter VII.—Conservancy and Drainage.— Clauses 256-257.*)

place other than a place set apart by the Commissioners for the disposal of rubbish or offensive matter is excessive, they may sanction the employment of a special establishment for the cleansing of such premises or for the removal of such rubbish or offensive matter and may impose on the owner or occupier of such premises such fee as they may deem proper to defray the cost of such establishment.

By-laws relating to conservancy.

Power to make by-laws regarding conservancy.

256. The Commissioners at a meeting may make by-laws— [*Cf.* Ben. Act III of 1884, ss. 296, 350 (*c*).]

(*a*) regulating the disposal of sewage, offensive matter, the carcasses of animals and rubbish;

(*b*) requiring notice of intention to construct, repair or alter a privy or urinal or any appurtenances thereof and determining the plans, specifications or other particulars to be furnished therewith;

(*c*) regulating the giving or refusing of sanction to the construction, repair or alteration of privies or urinals or appurtenances thereof, their position, design, ventilation, flooring, drainage, and providing for their proper and efficient maintenance; [New.]

(*d*) where there is an underground sewerage system, providing for the proper connection of privies and urinals therewith and the fees to be charged in this behalf and regulating the material, size, laying, position, trapping, ventilation and flushing of all private pipes or sewers pertaining to such privies or urinals, and the proper construction, flooring and ventilation of connected privies and urinals and for the provision of all appurtenances thereof;

(*e*) regulating the position, construction and maintenance of cess-pools and sinks; and

(*f*) generally regulating conservancy.

Drainage.

Construction of public drains.

257. The Commissioners in pursuance of a decision arrived at at a meeting may construct within or, subject to the sanction of the Local Government, outside the municipality, such drains as they think necessary for keeping the municipality properly cleansed and drained and may carry such drains through, across or under any street or place, and, after reasonable notice in writing to the owner or occupier, into, through or under any buildings or land: [*Cf.* U. P. Act II of 1916, s. 189; Ben. Act III of 1884, s. 198.]

Provided that no drain shall be constructed within the limits of a Cantonment without the approval of the Local Government and otherwise than with the concurrence of the General Officer Commanding the District in which such Cantonment is situated or, in the event of such concurrence being withheld, with the previous sanction of the Governor-General in Council.

(*Chapter VII.—Conservancy and Drainage.—Clauses 258—262.*)

Alteration of public drains.

258. (*1*) The Commissioners in pursuance of a decision arrived at at a meeting may, from time to time, enlarge, lessen, alter the course of, cover in or otherwise improve a municipal drain and may discontinue, close up or remove any such drain.

[*Cf.* U. P. Act II of 1916, s. 190; Ben. Act III of 1884, s. 198.]

(*2*) The exercise of the power conferred by sub-section (*1*) shall be subject to the condition that the Commissioners shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

Use of public drains by private owners.

259. The owner or occupier of a building or land shall be entitled to cause his drains to empty into the municipal drains, provided that he first obtains the written permission of the Commissioners, and that he complies with such conditions, consistent with any by-law, as the Commissioners at a meeting prescribe, as to the mode in which and the superintendence under which the communications are to be made between private drains and municipal drains.

[*Cf.* U. P. Act II of 1916, s. 191.]

Power to order demolition of drain constructed without consent of Commissioners.

260. No person shall, without the written consent of the Commissioners first obtained, make or cause to be made, or alter, or cause to be altered, any drain or branch drain leading into any of the municipal sewers or drains or into any water-course, street or land vested in the Commissioners, and the Commissioners may cause any drain or branch drain so made or altered, to be demolished, altered, remade or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such drain.

[*Cf.* Ben. Act III of 1884, ss. 226 and 272.]

Group or block of buildings, etc., may be drained by a combined operation.

261. (*1*) If it appears to the Commissioners at a meeting that a group or block of buildings may be drained or improved more economically or advantageously in combination than separately, and if a municipal sewer of sufficient size already exists or is about to be constructed within one hundred feet of any part or such group or block of buildings, the Commissioners may cause such group or block of houses to be so drained and improved,

[*Cf.* Ben. Act III of 1884, s. 228, and C. M. Act, s. 259.]

and the expenses thereby incurred shall be recovered from the owners of such buildings, in such proportions as shall to the Commissioners seem fit.

(*2*) Not less than fifteen days before any such work is commenced the Commissioners shall give to each such owner—

(*a*) written notice of the nature of the proposed work;

(*b*) an estimate of the expenses to be incurred in respect thereof and of the proportion of such expenses payable by him.

Power to Commissioners to enforce drainage of undrained premises situate within one hundred feet of a municipal drain.

262. When any premises are, in the opinion of the Commissioners at a meeting, without sufficient means of effectual drainage, and a municipal drain or some place approved by the Commissioners for the discharge of drainage is situated at a distance not exceeding one hundred feet from any part of the said

[*Cf.* Ben. Act III of 1884, ss. 227, 271; C. M. Act, s. 260.]

(*Chapter VII.—Conservancy and Drainage.—
Clauses 263, 264.*)

premises, they may, by written notice, require the owner of the said premises—

(*a*) to make a house-drain, emptying into such municipal drain or place, of such material, size and description and with such flushing arrangements as the Commissioners may prescribe;

(*b*) to remove any existing house-drain, or other appliance or thing used or intended to be used for drainage, which is injurious to health.

Power to Commissioners to enforce drainage of undrained premises in other cases.

263. When any premises are, in the opinion of the Commissioners at a meeting, without sufficient means of effectual drainage, and there is no municipal drain within one hundred feet of any part of the said premises, they may, by written notice, require the owner of the premises to construct— [*Cf.* C. M. Act, s. 261.]

(*a*) a closed cess-pool of such material, size and description, and in such position, as they may prescribe, and

(*b*) a house-drain communicating with such closed cess-pool.

By-laws relating to Drainage.

Power to Commissioners to make by-laws.

264. The Commissioners at a meeting may make by-laws—

(*a*) requiring every person who intends to construct, repair, add to or alter a house-drain or cess-pool, to submit an application to the Commissioners with such plans and other particulars as may be prescribed and regulating the giving and refusing of sanction to such application; and

(*b*) regulating the material, size, laying, flushing, ventilation, trapping, and position of drains and generally their construction, repair and maintenance.

CHAPTER VIII.

WATER-SUPPLY, LIGHTING, DRAINAGE, AND SEWERAGE SYSTEMS.

Commissioners to provide water-supply, drainage and lighting.

265. The Commissioners of every municipality shall— [Cf. Mad. Act V of 1920, 129, 136 and 137; Ben. Act III of 1884, s. 287.]

(a) provide a sufficient supply of water for the domestic use of the inhabitants;

(b) provide and maintain a sufficient system of drainage and conservancy; and

(c) cause the public streets to be sufficiently lighted.

Construction of water-works, drainage or sewerage works.

266. (1) Subject to the rules made by the Local Government under section 297 and in accordance with sanction granted under those rules, the Commissioners of any municipality or such Commissioners acting conjointly with the Commissioners of another municipality or with any other local authority, may, in pursuance of a decision arrived at at a meeting, within or without a municipality,— [Cf. Ben. Act III of 1884, ss. 287, 308.]

(a) construct water-works, or drainage or sewerage works, or works required for the introduction of a system of lighting by electricity, gas or otherwise, and [Cf. U. P. Act II of 1916, s. 224; Mad. Act V of 1920, 126; Ben. Act III of 1884, s. 37J.]

(b) from time to time enlarge, lessen, alter the course of, or otherwise modify or discontinue, close up, or remove the same.

(2) The Local Government may advance from the public funds on the security of the Municipal Funds and in the case of a joint scheme on the security of the municipalities and other local authorities, if any, concerned therein, the cost of preparing and carrying out any drainage, water-supply, sewerage, or lighting scheme sanctioned by the Government under the provisions of sub-section (1), and such advance shall be recoverable under Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance. [Act IX of 1914.]

Power to appoint an officer to execute the work.

267. The Local Government may, on the application of the Commissioners at a meeting or of the local authority acting with them under the provisions of section 266, direct that any works specified in any scheme or joint scheme for the purposes of section 266 shall be executed by an officer to be appointed by the Local Government and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded) and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary. [Cf. Ben. Act III of 1884, s. 37I.]

Power to compel municipality to provide proper drainage, sewerage, etc.

268. (1) If at any time it appears to the Local Government that the Commissioners of any municipality have made default in providing their municipality or any part of it with proper and sufficient drains or sewers or in providing a good and sufficient supply of water or lighting, and that danger arises from such default to the health or safety of the inhabitants of the municipality or any part of it, they may cause a scheme of drainage, sewerage, lighting or water-supply to be prepared by such person as they may depute for the purpose. [Cf. Ben. Act III of 1884, s. 37K.]

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 269, 270.)

(*2*) When a scheme has been prepared for a municipality under sub-section (*1*), the Local Government may call upon the Commissioners of such municipality to show cause at a meeting why they should not be required to carry out the scheme.

(*3*) The Local Government shall consider any objections and suggestions which may be submitted by the Commissioners and, if satisfied that the execution and maintenance of the scheme will not subject the financial resources of the municipality to any undue strain, may, subject to the rules framed under section 297, sanction the scheme with such modifications, if any, as they may think proper and specify a period during which the scheme shall be carried out.

(*4*) If the scheme is not carried out within the period fixed, the Local Government may, by order, appoint some person to carry it out and may direct that the cost of the works including the remuneration of the person appointed, and of the supervising establishment, the cost of land acquisition and any other incidental charges shall be paid within such time as they may fix from the Municipal Fund, and may, if necessary, direct that any rate or rates authorized under this Act shall be levied or increased (but not so as to exceed any *maximum* prescribed in that behalf) and may further, or as an alternative, advance any sum of money, required in their opinion for the execution of the scheme, from the public funds on the security of the Municipal Fund and such advance shall be recoverable under the Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance. IX of 1914.

(*5*) The person appointed under sub-section (*4*) may, for the purpose of executing the scheme, exercise any of the powers conferred on the Commissioners by or under this Act, which are specified in that behalf in the order issued under sub-section (*4*).

Power to compel execution of joint drainage schemes, etc.

269. (*1*) If the Local Government are of opinion that the conditions described in sub-section (*1*) of section 268, prevail in two or more adjoining municipalities, or any part thereof and that, in the interests of efficiency and economy, a joint drainage, sewerage, lighting or water-supply scheme should be prepared for both or all such municipalities or any part thereof, they may cause a joint scheme to be prepared accordingly. [New.]

(*2*) All the provisions of section 268 shall apply *mutatis mutandis* to such joint scheme and the Local Government shall determine what proportion of the cost of preparing, executing, and maintaining such scheme shall be borne by the Commissioners of each municipality concerned.

Extension of drainage schemes, etc.

270. (*1*) Where the Local Government cause a scheme to be prepared under section 268 or section 269 and the Commissioners of the municipality or municipalities concerned and the local authority or local authorities of any other area or areas apply to have the scheme extended so as to serve such area or areas, the Local Government may, by order, notify their general [New.]

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 271, 272.)

approval to such extension, determine what proportion of the cost of preparing, executing and maintaining the scheme shall be paid by such other local authority or local authorities and prescribe conditions for the punctual payment of such proportion.

(*2*) A copy of such order shall be sent to the Commissioners of each municipality concerned and to such other local authority or local authorities, and if they request that the proposed extension of the scheme shall be made, the Local Government shall, subject to the rules made under section 297, finally sanction such extension.

Disputes as to joint schemes.

271. If at any time after any joint scheme has been finally sanctioned any dispute arises between the Commissioners of two or more municipalities or between the Commissioners and any other local authority concerned in such scheme respecting such matters as supervision, management, maintenance, extension, repairs, alterations, the quantity of water or lighting to be supplied to each municipality or to any area under the control of any other local authority concerned, connection with the mains and the fees charged therefor and the like, a reference shall be made to the Local Government, whose orders shall be final. [New.]

Power to Local Government to take control over imperfect, inefficient or unsuitable drainage works, etc.

272. (*1*) If at any time it appears to the Local Government that any drainage works, sewerage works, lighting works or water-works executed under the provisions of sections 266, 268, 269 or 270 or vested in the Commissioners of any municipality are maintained or worked in an imperfect, inefficient or unsuitable manner, the Local Government may, by written order, direct the Commissioners of the municipality or municipalities or other local authority or local authorities, within a period specified in the order, to show cause at a meeting why the drainage works, sewerage works, lighting works or water-works with all plant, fittings and appurtenances thereof should not be handed over for such period as the Local Government may fix to the control and management of such person as the Local Government may appoint. [Ne

(*2*) If cause is not shown to the satisfaction of the Local Government within the period specified in the order issued under sub-section (*1*), the Local Government may, by order, direct that the drainage works, sewerage works, lighting works or water-works with all plant, fittings and appurtenances thereof shall be handed over for such period as they may fix to the control and management of such person as they may appoint. During the period so fixed the complete control and management of the drainage works, sewerage works, lighting works or water-works, as the case may be, shall be vested in the person so appointed, who shall engage such establishment for the purpose of maintaining and working such drainage works, sewerage works, lighting works or water-works as the Local Government may from time to time approve. The cost of such establishment and of all materials, implements, coal, stores and everything

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 273—275.)

necessary for the maintenance and working of the works shall be paid from the Municipal Fund within such period as may be fixed by the Local Government.

(*2*) If the cost is not so paid, the District Magistrate may proceed as in section 535.

General provisions relating to the laying and connecting of pipes, sewers and the like.

Power of Commissioners to lay or carry wires, pipes, drains or sewers through private land.

[*Cf.* Pun. Act III of 1911, s. 132; Ben. Act III of 1884, s. 287.]

273. (*1*) The Commissioners may carry any pipe, drain, cable, wire, sewer or channel of any kind for the purpose of providing or of carrying out and establishing or maintaining a system of drainage, sewerage, lighting or water-supply through, across, under or over any street or place, laid out as, or intended for, a street, and after giving reasonable notice in writing to the owner or occupier, into, through, across, under, over or up the side of any land or building whatsoever, situate within the limits of the municipality, and, for the purpose of introduction, or distribution of light or water, or for the outfall of water, or for the removal or outfall of sewage, or for drainage outfall, without such limits, and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such pipe, drain, cable, wire, sewer or channel, as the case may be, in an effective state for the purpose for which the same may be used or intended to be used:

Provided that no annoyance to the public more than is necessarily caused by the proper execution of the work is created by any such operation: and

Provided, further, that reasonable compensation shall be paid to the owner or occupier for any damage at the time sustained by him and directly occasioned by the carrying out of any such operations.

(*2*) Whenever the Local Government have sanctioned any works without the limits of any municipality for bringing light or water into such municipality or for draining or disposing of the sewage of such municipality, the Commissioners may exercise all the powers which by this Act they may exercise within the municipality, in the construction, maintenance and repair of such work throughout the line of country in which such works are situated or through which they are to run.

Wires, pipes, drains or sewers laid or carried above surface of ground

[*Cf.* Pun. Act III of 1911, s. 133.]

274. In the event of any pipe, drain, cable, wire, sewer or channel being laid or carried above the surface of any land or through, over or up the side of any building, such pipe, drain, cable, wire, sewer or channel, as the case may be, shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and reasonable compensation shall be paid in respect of any substantial interference with any such right to such enjoyment.

Previous notice to be given.

[*Cf.* Pun Act III of 1911, s. 134.]

275. Except in cases to which section 280 relates, the Commissioners shall cause not less than fourteen days' notice in writing to be given to the owner or any occupier before commencing any operations under section 273.

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 276—280.)

Power to permit connection to houses and lands.

276. (*1*) Subject to the prescribed conditions and restrictions and to such terms as the Commissioners may from time to time determine, the Commissioners at a meeting may—

[*Cf.* Ben Act III of 1884, ss 290, 291, 294, 302; B. & O. Act VII of 1922, s 303.]

(*a*) on the application of the owner or occupier of any house or land paying the water-rate or lighting-rate, as the case may be, make or cause, or permit to be made, communication or connections from any main, distribution pipe, cable or wire belonging to the Commissioners for the purpose of leading water, electricity or gas to such house or land, or

(*b*) on the application of the owner or occupier of any house or land make, or cause or permit to be made, any connection or communication to such house or land from any drain, sewer or channel constructed or maintained by or vested in the Commissioners.

(*2*) The Commissioners at a meeting may require the amount necessary for the execution through their own agency of any work under this section to be paid or deposited before such work is executed by them.

[*Cf.* Ben. Act III of 1884, s. 302.]

Power to make or require connections in certain cases.

277. (*1*) The Commissioners at a meeting may, at any time, establish a connection or communication from any water-main, drain or sewer to any house or land, or may by notice require the owner or occupier of any such house or land to establish any such connection or communication, in such manner and within such time as the Commissioners, by notice in that behalf, may direct, at the cost of such owner or occupier.

[*Cf.* Pun. Act III of 1911, s 136.]

(*2*) In any case in which a service-pipe from a main supplies water to two or more holdings, the Commissioners may, by written notice, require the owner of such holdings to lay down separate service-pipes for the separate holdings, and the expense of so doing shall be borne by all such owners in such proportions as may be determined by the Commissioners.

Power to establish meters and the like.

278. The Commissioners may establish meters for the purpose of testing the quantity or quality of any gas or electricity supplied to the house or land of any person to or for the use of any person or business.

[*Cf.* Pun. Act III of 1911, s. 137.]

Attachment of meters.

279. For the purpose of measuring and recording the amount of water consumed, the Commissioners may affix a meter at the point of junction between the service-pipe of the consumer and the municipal main.

[*Cf.* B & O. Act III of 1914, s. 32; Ben. Act III of 1884, s 295.]

Power to enter premises.

280. (*1*) Any officer authorized in this behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land for the purpose of inspecting or repairing any water, gas, electric or other installation and for taking readings of meters connected therewith.

[*Cf.* Pun Act III of 1911, s. 206; Ben. Act III of 1884, s. 292.]

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 281—285.)

(2) If such officer at any such time is refused admittance into such house or land for the purposes aforesaid, or is prevented from making such examination, the Commissioners may forthwith cut off the supply of gas, water or electricity, as the case may be, from such house or land:

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated to women, unless sufficient notice in writing and opportunity is given to enable the women to remove to some part of the premises where their privacy may be preserved.

Presumption as to correctness of meter.

281. Whenever water, electricity or gas is supplied under this chapter through a meter, it shall be presumed that the quantity or quality indicated by the meter has been consumed until the contrary is proved. [*Cf.* C. M. Act, s. 239.]

Cost of providing, attaching and replacing meter.

282. The expense of providing, attaching and replacing a meter shall be borne by the person requiring the supply or, if the service-pipe or connection has been laid down or made before the commencement of this Act, by the owner of the house or land, except in the case of a special agreement to the contrary between the owner and the occupier. Such expense shall be recovered in one or more instalments according as the Commissioners think proper: [*Cf.* C. M. Act, Sch. XIV, r. 1.]

Provided that the Commissioners shall bear the cost of replacing a meter which is out of order or under repair owing to an inherent defect and not owing to its having been tampered with.

Commissioners to replace damaged meter.

283. When any meter attached to the service-pipe or connection of any house or land is out of order or under repair, the Commissioners shall forthwith replace it by another meter. [*Cf.* C. M. Act, Sch. XIV, r. 11.]

Testing of meter.

284. (*1*) If the owner or occupier of any house or land to which water, electricity or gas is supplied through a meter desires to have the meter tested, he may send a written application to the Commissioners, and such application shall be accompanied by a fee of five rupees. [*Cf.* C. M. Act, Sch. XIV, r. 9.]

(*2*) Upon receipt of any such application and fee the Commissioners shall forthwith cause such meter to be tested at a time and place to be specified in a notice to be served upon such owner or occupier.

(*3*) If such meter is found, upon being so tested, to be incorrect by more than two per cent., the said fee shall be returned to the person who sent it.

Fraud in respect of meter.

285. (*1*) No person shall fraudulently— [*Cf.* C. M. Act, Sch. XIV, r. 12.]

(*a*) alter the index to any meter, or prevent any meter from duly registering the quantity or quality of water, electricity or gas supplied, or

(*b*) abstract or use water, electricity or gas before it has been registered by a meter, set up for the purpose of testing the quantity or quality of the same.

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 286—289.)

(2) The existence of artificial means under the control of the consumer for causing any such alteration, prevention, abstraction or use shall be evidence that the consumer has fraudulently effected the same.

Injuring meter or fittings.

286. No person shall wilfully or negligently injure or suffer to be injured any meter or any of the fittings of any meter. [*Cf.* C. M. Act, Sch. XIV, r. 13.]

Maintenance of supply of water

287. The Commissioners at a meeting shall from time to time determine what supply of water for domestic purposes shall be maintained in their service-pipes and mains, and during what hours such supply shall be continued. [*Cf.* Ben. Act III of 1884, s. 289; B. & O. Act VII of 1922, s. 314.]

Supply for business

288. (*1*) The Commissioners at a meeting may supply and may at any time cease to supply water for purposes other than domestic purposes. [*Cf.* Ben. Act III of 1884, s. 291.]

(*2*) For all water supplied under sub-section (*1*) payment shall be made at such rates and on such conditions as the Commissioners at a meeting may from time to time prescribe. [*Cf.* Mad. Act V of 1920, s. 132.]

(*3*) No person shall, without the written permission of the Commissioners use, for other than domestic purposes, water supplied under this chapter for domestic purposes.

Free supply of certain quantity of water for domestic purposes.

289. (*1*) The occupier of every premises to which water is supplied by the Commissioners under this chapter shall be entitled to have, for each rupee paid quarterly as the water-rate on account of such premises and free of further charge, such quantity of water per quarter for domestic purposes as the Commissioners at a meeting may from time to time prescribe. [*Cf.* Ben. Act III of 1884, s. 295.]

(*2*) All water supplied in excess of the free allowance to which an occupier is entitled under sub-section (*1*) shall be paid for by him at a rate to be fixed from time to time by the Commissioners at a meeting.

(*3*) If such premises are ordinarily occupied by two or more persons holding in severalty, the owner shall be liable for water supplied in excess as referred to in sub-section (*1*); but such owner shall be entitled to recover rateably from the several occupiers any amount so paid.

(*4*) Every incoming or outgoing occupier of any metered premises shall at least three clear days before entering into the occupation of or vacating such premises, as the case may be, cause a written notice to be served upon the Commissioners, stating the date on which he intends to occupy or vacate the premises and requiring the Chairman to cause the meter to be read for the determination of the liability, if any, for any excess consumption of filtered water on the date of such occupation or the date of such vacation of the premises, as the case may be. [*Cf.* C. M. Act, s. 238.]

(*5*) Upon receipt of such notice the Chairman shall cause the meter to be read and furnish such occupier with a statement of such meter reading.

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 290—292.)

(*6*) The outgoing occupier shall ordinarily be liable to pay for any excess supplied up to the date of his vacating the premises;

and the incoming occupier's liability for any excess consumption of filtered water shall ordinarily accrue from the commencement of his occupation:

Provided that where no written notice is delivered to the Commissioners under sub-section (*4*), the Commissioners shall be entitled to realise from such incoming occupier the full proportionate amount of the charges for excess water consumed, on the basis of the next quarterly or other reading of the meter made after the occupation of the incoming occupier, or such less amount as the Commissioners may think fit, regard being had to the number of days in any quarter during which the premises were occupied by such incoming occupier, the number of inmates during that period and the amount of free allowance to which such occupier may be entitled under sub-section (*1*).

Inspection of works and pipes before connection.

290. (*1*) Before a connection for the supply of water from the distribution mains of the Commissioners to any premises is sanctioned, the Commissioners may cause all the works, pipes and fittings within the said premises to be inspected by an officer appointed by them in this behalf. [*Cf.* Ben Act III of 1884, s. 301.]

(*2*) The cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners at a meeting shall from time to time direct.

(*3*) Until such officer has certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner a connection with the Commissioners' service-pipes shall not be permitted.

(*4*) Notwithstanding anything contained in this section, if at any time after a certificate has been granted under sub-section (*3*) the Commissioners are satisfied that any work, pipe or fitting is unsuitable or results in a waste of water, the Commissioners may require the person who provided such work, pipe or fitting, or the owner of the premises, to alter or add to them at his own cost. [B. & O Act VII of 1922, s 318(*4*).]

Permission to person outside the municipality to take water.

291. The Commissioners at a meeting may with the sanction of, and on such terms (if any) as may be approved by, the Local Government supply water to the Commissioners of another municipality or to a local authority or other person outside the municipality. [*Cf.* Ben. Act III of 1884, s. 300; Mad. Act V of 1920, s. 133.]

Water not to be taken out of municipality or wasted

292. No person— [*Cf.* Ben. Act III of 1884, ss 298, 299, 300, 303.]

(*i*) shall take, or cause to be taken for use outside the limits of the municipality water supplied by the Commissioners, without the permission of the Commissioners given under section 291 or in contravention of any conditions which they may prescribe;

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clauses 293—296.)

(*ii*) being the occupier of any premises to which water is supplied by the Commissioners under this chapter, shall, from negligence or other circumstances under the control of the said occupier, allow the water to be wasted, or allow the pipes, works or fittings for the supply of water in his premises to be out of repair so as to cause waste of water;

(*iii*) shall otherwise cause waste of water supplied by the Commissioners;

(*iv*) shall unlawfully flush, draw off, divert or take water from, any water-works belonging to, or under the control of, the Commissioners, or from any water or streams by which such water-works are supplied.

Owner to bear the cost of keeping works in repair.

293. Except in the case of a special agreement to the contrary, the owner of any premises shall bear the expense of keeping all works connected with the supply of water to such premises in substantial repair, and if he fails to do so, the occupier may, after giving the owner three days' notice in writing, himself have the repairs executed and deduct the expenses thereof from any rent which is due from him to the owner in respect of such premises: [*Cf.* C. M. Act, s. 233; Ben. Act III of 1884, s. 305.]

Provided that nothing in this section shall affect the liabilities of parties under leases executed previous to the extension of this chapter to the municipality in which the said premises are situated.

Estimate and specification of works to be sent.

294. No work for introducing a supply of water to any premises shall be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such specification and estimate to the owner. [*Cf.* Ben Act III of 1884, s. 304.]

Power to take charge of private connections.

295. The Commissioners at a meeting may, if they think fit, take charge of all communication-pipes and fittings of any existing private water-works connected with the municipal water-supply up to and including the stop-cock nearest the supply-main for the said works, and such communication-pipes and fittings shall thereafter vest in, and be maintained at the expense of, the Commissioners as municipal water-works. [*Cf.* Bom. Act III of 1888, s. 273; C. M. Act, s. 234.]

Power to cut off or turn off supply of water to premises.

296. (*1*) Notwithstanding anything contained in the foregoing sections of this chapter the Commissioners may cut off the connection between any of their water-works and any premises to which water is supplied from such works, or may turn off such supply, in any of the following cases, namely:— [*Cf.* C. M. Act, s. 246; Ben. Act III of 1884, ss. 293 and 297; Mad Act V of 1920, s. 134.]

(*a*) if the premises are unoccupied; or

(*b*) if, after receipt of a written notice from the Commissioners requiring him to refrain from so doing, the owner or occupier of the premises continues to use the water or to permit the same to be used, in contravention of this Act or any rule or by-law made thereunder; or

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clause 297.)

(*c*) if the occupier of the premises contravenes section 285, section 286, sub-section (*3*) of section 288 or section 292; or

(*d*) if any pipes, taps, works or fittings connected with the supply of water to the premises be found, on examination by any officer of the Commissioners authorized by them in this behalf, to be out of repair to such an extent as to cause so serious a waste or contamination of water that in the opinion of the Chairman immediate prevention is necessary; or

(*e*) if the use of the premises for human habitation has been prohibited under section 350, from the date from which the premises are to be vacated under the order of the Magistrate; or

(*f*) if there is any water-pipe situated within the premises to which no tap or other efficient means of turning the water off is attached; or

(*g*) if by reason of a leak in the service-pipe or fitting damage is caused to the public street and immediate prevention is necessary:

Provided as follows:—

(*i*) water supplied for flushing privies or urinals shall not be cut off or turned off;

(*ii*) water shall not be cut off or turned off in any case referred to in clause (*e*) unless written notice of not less than forty-eight hours has been given to the occupier of the premises.

(*2*) The expense of cutting off the connection or of turning off the water and of restoring the same, as determined by the Commissioners in any case referred to in sub-section (*1*), shall be paid by the owner or occupier of the premises:

Provided that no charge for such expense shall be made in the cases mentioned in clause (*a*) and clause (*e*) of the said sub-section.

(*3*) No action taken under or in pursuance of this section shall relieve any person from any penalties or liabilities which he may otherwise have incurred.

Power to make rules

297. The Local Government may make rules to regulate—

(*a*) the preparation of plans and estimates for water-works or for the introduction of a system of lighting by electricity, or gas, or of drainage or sewerage, where such works or system are or is to be partly or wholly constructed or carried out at the expense of the Commissioners;

(Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clause 297.)

(*b*) the power of the Commissioners or the Local Government to accord sanction to such plans and estimates; [*Cf.* Mad. Act V of 1920, s. 303 (2) (*h*).]

(*c*) the publication in the *Calcutta Gazette* of the particulars of, and the nature of any such work or scheme, its cost, and the manner in which it is to be financed and carried out;

(*d*) the size and nature of water-works, mains, pipes, cables, wires, drains, sewers or channels to be constructed or laid by the Commissioners for the supply of water, electricity or gas, or for drainage or sewerage; [*Cf.* U. P. Act II of 1916, s 235.]

(*e*) the maintenance of municipal water-works and of pipes and fittings in connection therewith;

(*f*) the size and nature of the stand-pipes or pumps to be erected by the Commissioners and of the ferrules and all pipes, stand-pipes, stop-cocks, taps, hydrants and other fittings, whether within or outside any premises, that may be prescribed or necessary for the regulation of the supply and use of water, gas or electricity; [*Cf.* Ben. Act III of 1884, s. 317.]

(*g*) the mains or pipes in which fire plugs are to be fixed and the places at which keys of the fire plugs are to be deposited:

(*h*) the periodical analysis by a qualified analyst of the water supplied by the Commissioners;

(*i*) the conservation of, and the prevention of injury or contamination to, sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the municipality;

(*j*) the manner in which connections with water-works or with the lighting, drainage or sewerage system of the Commissioners shall or may be constructed, altered or maintained, the fees to be levied for such connections and the person by whom they shall be paid, and the agency to be employed for such construction, alteration or maintenance; [*Cf.* Ben. Act III of 1884, s. 318.]

(*k*) the rates at which the charges for water, gas or electricity supplied may be levied by the Commissioners and the use, maintenance and testing of meters and the rebate, if any, to be allowed where a meter is found to be defective;

(*l*) the regulation of all matters and things connected with the supply and use of water,

[*Chapter VIII.—Water-supply, lighting, drainage and sewerage systems.—Clause 297.*]

electricity or gas, and the turning on and turning off and preventing the waste of water, electricity or gas; and

(*m*) any other matter relating to the supply of water, electricity or gas or of drainage or sewerage in respect of which this Act makes no provision or insufficient provision and further provision is, in the opinion of the Local Government, necessary.

CHAPTER IX.

BUILDINGS.

Application of Schedule VI.

Application of Schedule VI.

298. (*1*) The Local Government may, by notification declare that Schedule VI or any part thereof shall be in force in such municipalities as may be specified in the notification, and may, on the application of the Commissioners of a municipality, cancel or modify such notification in respect of any municipality so specified. [New.]

(*2*) The provisions of sections 301, 303 to 313 and 315 shall have effect only in those municipalities in which Schedule VI or any part thereof is brought into force under sub-section (*1*).

Building-sites and erection of buildings.

Use of building-sites and erection of buildings.

299. No piece of land shall be used as a site for the erection of a building and no building shall be erected otherwise than in accordance with the provisions of this chapter and of any rule or by-law made under this Act, relating to the use of building-sites or to the erection of buildings, as the case may be, and in municipalities where Schedule VI or part thereof is in force, in accordance with that Schedule or part thereof. [*Cf.* C. M. Act, s. 319; Ben. Act III of 1884, ss. 237, 241.]

Commissioners to determine site of proposed masonry building.

300. If any question arises as to what, for the purposes of this Act, shall be deemed to be the site of any proposed masonry or framed building, the Commissioners at a meeting shall determine the same, and their decision shall be final. [*Cf.* C. M. Act, s. 320.]

Masonry building not to be erected without special permission in certain cases.

301. (*1*) Save with the special permission of the Commissioners at a meeting, no building (other than a hut) shall be erected unless— [*Cf.* C. M. Act, s. 325; Ben. Act III of 1884, s. 237.]

(*a*) the site of such building abuts on a public street, or a projected public street or a private street duly sanctioned and constructed in accordance with the provisions of this Act, or existing before the commencement of this Act, or

(*b*) there is access to the building from any such street by a passage or pathway, appertaining to such site, and not less than twelve feet wide at any part.

(*2*) No building shall be erected so as to deprive any masonry or framed building of the means of access as provided in this section.

Exemptions.

Exemptions.

302. The following buildings shall be exempted from the operation of sections 301, 303 to 313 and 315, namely :— [*Cf.* C. M. Act, s. 333; Ben. Act III of 1884, s. 244R.]

(*a*) any building erected and used, or intended to be erected and used, exclusively for the purpose of accommodating a pump for pumping water to the highest stories of a building, or exclusively for the purpose of a plant-house, summer-house (not being a dwelling-house), poultry-house or aviary, if the building be wholly detached from, and at a distance of at least ten feet from, the nearest adjacent building;

(Chapter IX.—Buildings.—Clauses 303—306.)

(*b*) any building erected or intended to be erected by, or with the sanction of the Commissioners, for use solely as a temporary hospital for the reception and treatment of persons suffering from any infectious or contagious disease, and

(*c*) any hoarding or like means of protection (other than a masonry wall) which the owner of any premises certifies to the Chairman not less than seven days after its erection to have been erected for the purpose of preventing the threatened acquisition of any easement over his own premises or any portion thereof, provided that the stability of such hoarding or other means of protection is certified by the Chairman.

Application for sanction.

Application to erect building to be submitted in the prescribed form.

303. Every person who intends to erect a building shall first submit an application in the form prescribed in Schedule VI to the Commissioners together with such plans, specifications and other particulars as may be prescribed in that Schedule or in any rule or by-law made in this behalf.

[*Cf.* Ben. Act III of 1884, ss. 237, 238, 240, 243, 244J, 271.]

Permission to execute work when to be given or refused.

304. (*1*) Within thirty days or, in the case of huts, within fifteen days after the receipt of any application made under section 303, or of any information or documents, which the Commissioners may reasonably require the applicant to furnish before deciding whether permission shall be granted to execute any work under the aforesaid section, the Commissioners shall, by written order, either—

[*Cf.* C. M. Act, Sch. XVII, r. 57; Ben. Act III of 1884, ss. 238, 243, 244L, 244M.]

(*a*) grant permission conditionally or unconditionally to execute the work, or

(*b*) refuse, on one or more of the grounds mentioned in section 308, to grant such permission.

(*2*) When the Commissioners grant permission conditionally under clause (*a*) of sub-section (*1*), they may in regard thereto impose such conditions, consistent with this Act, as they may think fit.

(*3*) Where permission has been refused under sub-section (*1*), an appeal shall lie to the Commissioners at a meeting, provided that no order passed by the Commissioners at a meeting in respect of such appeal shall relax the provisions of section 308 or of Schedule VI or of any rule or by-law made under this Act.

Permission to be implied if Commissioners default in coming to a decision.

305. If within the period prescribed by section 304 the Commissioners have neither granted nor refused to grant permission to execute any work, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or of Schedule VI or of any rule or by-law applying thereto.

[*Cf.* C. M. Act, Sch. XVII, r. 58; Ben. Act III of 1884, ss. 238, 244A.]

Notice after completion of work.

306. Within one month after the completion of the erection of a new building (other than a hut) the owner of the building shall send to the Commissioners a written notice of the fact of such completion.

[*Cf.* C. M. Act, Sch. XVII, r. 20; Ben. Act III of 1884, ss. 217, 244F.]

(*Chapter IX.—Buildings.—Clauses 307, 308.*)

Inspection of work requiring sanction.

307. (*1*) The Chairman or any other person authorized by the Commissioners in this behalf may, at any time, and without notice, inspect any work in respect of which an application is required under section 303— [*Cf.* U. P. Act, II of 1916; Ben. Act III of 1884, ss. 244G, 244H.]

(*a*) while under construction, or

(*b*) within one month of the receipt of the notice of completion sent under section 306, or, in default of such notice, at any time after completion.

(*2*) If, on making any inspection under sub-section (*1*) the Chairman or other person so authorised finds that the building inspected is being or has been erected—

(*a*) subject to the provisions of section 305, otherwise than in accordance with the plans thereof which the Commissioners have approved, or

(*b*) in such a way as to contravene any of the provisions of this Act or of Schedule VI or of any rule or by-law made in this behalf,

the Chairman may, by written notice, require the owner of the building either to make such alterations as may be specified in the notice with the object of bringing the work into conformity with the said plans or provisions, as the case may be, or to appear before the Commissioners at a meeting and show cause why such alterations should not be made.

(*3*) If such owner does not appear and show cause under sub-section (*2*) he shall be bound to make the alterations specified in such notice.

(*4*) If such owner appears and shows cause under sub-section (*2*), the Commissioners shall, after hearing him, either—

(*a*) cancel the notice issued under that sub-section, or

(*b*) confirm the same, subject to such modifications (if any) as they may think fit.

Grounds on which permission to erect a masonry building may be refused.

308. The only grounds on which permission to erect a building may be refused are the following, namely :— [*Cf.* C. M. Act, Sch. XVII, r. 59; Ben. Act III of 1884, ss. 244C, 244O.]

(*a*) that the work, or any of the particulars comprised in the plans or specifications would contravene some specific provision of this Act or of Schedule VI or of some specific rule or by-law made in this behalf; or

(*b*) that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule VI or in any rule or by-law made in this behalf; or

(*c*) that any of the documents referred to in Schedule VI or in any rule or by-law made in this behalf have not been signed in the manner prescribed ; or

(*d*) that any information or documents required by the Commissioners under this Act or Schedule VI or under any rule or by-law made in this behalf has or have not been duly furnished ; or

(*Chapter IX.—Buildings—Clauses 309—311.*)

(*e*) where the provisions of the Calcutta Improvement Act, 1911, have been extended to any municipality that, in the case of a new building falling within the street alignment or building-line of a public street projected under section 63 of the Calcutta Improvement Act, 1911, the permission of the Chairman of the Board of Trustees for the Improvement of Calcutta has not been obtained; or Ben. Act V of 1911.

(*f*) that the applicant has not satisfied the Commissioners in regard to any objections which may have been taken on any of the grounds mentioned in this section, to the grant of the said permission.

Power as inflammable structures.

309. (*1*) The Commissioners at a meeting may, by public notice, direct that, within certain limits to be fixed by them, the roofs and external walls of huts or other buildings shall not be made or renewed with grass, mats, leaves, or other highly inflammable materials without their consent in writing. [*Cf.* Ben. Act III of 1884, ss. 236, 270; U. P. Act II of 1916, s. 257.]

(*2*) The Commissioners at a meeting may, at any time by written notice, require the owner of any building which has an external roof or wall made of any such material as aforesaid to remove such roof or wall within such reasonable time as shall be specified in the notice, notwithstanding that a public notice under sub-section (*1*) has not been issued or that such roof or wall was made with the consent of the Commissioners or before the issue of such public notice, if any:

Provided that in the case of any such roof or wall in existence before the issue of such public notice or made with the consent of the Commissioners, they shall make compensation for any damage caused by the removal which shall not exceed the original cost of constructing the roof or wall.

Power to Commissioners to cancel permission on the ground of material misrepresentation by applicant.

310. If, at any time permission to erect any masonry or framed building has been given, and the Commissioners at a meeting are satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application made under section 303, or in the plans, elevations, sections or specifications submitted therewith in respect of such building, they may cancel such permission, and any work done thereunder shall be deemed to have been done without permission. [*Cf.* O. M. Act, Sch. XVII, r. 65.]

Duration and expiry of permission to erect a building.

311. (*1*) A permission to erect a building, granted under this chapter shall, unless it is renewed on an application made to the Commissioners for this purpose, continue only for one year after the date on which it is granted, unless the work of erection has been commenced within that period, and in any case shall not continue for a period longer than two years from the said date unless it is so renewed. [*Cf.* Ben. Act III of 1884, ss. 239, 244D, 244P.]

(*2*) Any person who erects a building or continues the work of erection of a building, when the permission granted under this chapter has expired, shall be deemed to erect such building or to continue such work without sanction.

(*Chapter IX.—Buildings.—Clauses 312, 313.*)

Application of Act to alterations of, and additions to, buildings.

Application of Act to alterations of, and additions to, buildings.

312. (*1*) The provisions of— [Cf. C. M. Act, s. 330; Ben. Act III of 1884, ss. 240 and 244J.]

(*a*) this chapter,

(*b*) Schedule VI, and

(*c*) any rules or by-laws made under this Act,

relating to the erection of buildings, shall also apply to every material alteration of, or addition to, any building, but shall not apply to necessary repairs not involving any of the works which constitute a material alteration or addition.

(*2*) An alteration or addition in or to a building shall for the purposes of this chapter and of Schedule VI and of any rule or by-law, be deemed to be material if—

(*a*) it increases or diminishes the height of, the area covered by, or the cubical capacity of the building, or any part thereof, or reduces the height, area, or cubical capacity of any room in the building below the minimum prescribed in Schedule VI, or in any rule or by-law ; or

(*b*) it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene ; or

(*c*) it converts into a place for human habitation a building or part of a building originally constructed for other purposes ; or

(*d*) it is an alteration or addition declared by Schedule VI or by any rule or by-law made in this behalf to be a material alteration or addition.

(*3*) If any question arises as to whether any addition or alteration is a necessary repair not affecting the position, safety, stability, use, sanitary condition, or dimensions of a building or room, such question shall be referred to the Commissioners at a meeting and the decision of the Commissioners shall be final.

Rules.

313. (*1*) In alteration of, addition to, or cancellation of Schedule VI, the Local Government may make rules—

(*a*) for the regulation or restriction of the use of land as sites for building, and

(*b*) for the regulation and restriction of building and of alterations in, or additions to, buildings.

(*2*) When Schedule VI has been so altered, added to or cancelled, any reference made in this Act to the said schedule shall be construed as a reference to the schedule as amended under sub-section (*1*) or, if the schedule has been cancelled, to the rules substituted therefor.

(*Chapter IX.—Buildings.—Clauses 314, 315.*)

Special provisions in respect of less advanced municipalities.

314. (*1*) The Commissioners of any municipality to which the provisions of Schedule VI are not extended under section 298 shall at a meeting, if the Local Government so require, provide by means of by-laws for the control of the erection of buildings and of material alterations and additions to buildings to give effect to the provisions of this Act and of that schedule in this behalf to such extent as local circumstances permit and subject to such modifications as local circumstances may require.

(*2*) Where the provisions of Schedule VI are extended only in part to any municipality the Commissioners shall, at a meeting, if the Local Government so require, regulate by means of by-laws the matters that are regulated by that part of Schedule VI which is not extended to such municipality.

Powers to make by-laws regulating buildings.

315. (*1*) The Commissioners of a municipality to which the provisions of Schedule VI have been extended under this Act in whole or in part may, and when required by the Local Government shall, make at a meeting by-laws, consistent with this Act and Schedule VI (or the part thereof extended to the municipality) applicable to building-sites or to buildings generally or to any class of buildings within the whole or any part of the municipality, and may by such by-laws— [*Cf.* Ben. Act III of 1884, s. 241.]

(*a*) determine the plans, specifications and other documents or particulars to be furnished with any application made for permission to construct, add to or alter house-drains, privies or urinals;

(*b*) declare an alteration or addition of any specific description to be a "material alteration or addition" although not falling within the scope of clauses (*a*), (*b*) or (*c*) of sub-section (*2*) of section 312;

(*c*) prescribe that, on payment of fees in accordance with such scale as is specified in this behalf, plans and specifications shall be obtainable from the Commissioners or from an agency prescribed by the Commissioners; [*Cf.* U. P. Act II of 1916, s. 298(*2*) (*d*).]

(*d*) prescribe the type or description of buildings which may or may not, and the purposes for which a building may or may not, be erected in any specified area or areas; [*Cf.* U. P. Act II of 1916, s. 298(*2*) (*d*).]

(*e*) prescribe that builders and surveyors shall be licensed and that the erection of buildings shall not be permitted except by licensed builders and surveyors;

(*f*) prescribe the fees to be paid by builders and surveyors for obtaining a license and the qualifications to be possessed by them; and

(*g*) prescribe, with reference to the erection of buildings, all or any of the following matters:—

(*i*) the materials and method of construction to be used for external and party walls, roofs and floors;

(*ii*) the regulation of sites for buildings, and the materials and method of construction of fireplaces, chimneys, drains, privies, urinals and cesspools;

(*Chapter IX.—Buildings.—Clause 315.*)

(*iii*) the ventilation and flushing of drains, latrines, urinals and cesspools, and the provision of access thereto from streets, and where a sewerage system has been provided, the connection of service privies with a sewer and the method of the connection ;

(*iv*) the proportion of any building site, which shall not be built over, the amount of space to be left at the sides and back of any building and the area of courtyards in proportion to the floor area of rooms abutting thereon ;

(*v*) the height of any building or portion of a building in relation to the width of the street or streets on which it abuts and to the space left open at the back of the building and forming a part of the site, and the height of any building or portion of a building abutting on a courtyard ;

(*vi*) the level, drainage and paving of court-yards ;

(*vii*) the width of foundation, height of plinth, and stability of structure ;

(*viii*) the minimum floor area, minimum height, and ventilation of rooms used or intended to be used for human habitation ;

(*ix*) any other matter affecting the ventilation or sanitation of the building ;

(*x*) the regulation by specific rules of special classes of buildings in any of the above matters ;

(*xi*) the laying out of huts in a *bustee* in accordance with alignment lines, prescribed and demarcated on the ground ;

(*xii*) the distance to be kept open between huts and alignment lines ;

(*xiii*) the means to be provided for egress from public buildings in case of fire ;

(*xiv*) regulating, in any manner not specifically provided for in this Act, the erection of any enclosure, wall, fence, tent, awning or other structure, of whatsoever kind or nature (other than a *hogla* or similar kind of temporary shed erected on ceremonial festive occasions), on any land within the limits of the municipality ; and

(*xv*) special rules in respect of any of the foregoing matters for any particular type or class of buildings which are used or which it is intended to use for any particular purpose.

(*2*) By-laws made by the Commissioners of a municipality to which the provisions of Schedule VI have not been extended or have only been extended in part, shall be subject to the approval of the Local Government and may provide for any of the matters specified in clauses (*a*) to (*g*) of sub-section (*1*) and also for the regulation of building sites within the municipality, but shall not be inconsistent with any portion of this Act which applies to such municipality or with any portion of Schedule VI or any rule made thereunder which has been extended thereto.

(*Chapter IX.—Buildings.—Clause 316.*)

Order for demolition or alteration of buildings in certain cases.

316. (*1*) If the Commissioners are satisfied— [New; *Cf.* Ben. Act III of 1884, ss 238, 244, 244K, 244S, 244V.]

(*a*) that the erection of any building—

(*i*) has been commenced without obtaining their written permission under section 304 otherwise than under the provisions of section 305, or

(*ii*) is being carried on or has been completed otherwise than in accordance with the particulars on which such permission or orders was or were based, or after such permission has been lawfully withdrawn, or

(*iii*) is being carried on or has been completed in breach of any provision contained in this Act or in Schedule VI or in any rules or by-laws made in this behalf or of any condition, modification, direction or requisition lawfully given or made under this Act or Schedule VI or under such rules or by-laws, or

(*b*) that any material alteration of, or addition to, any building has been commenced or is being carried on or has been completed in breach of any provision contained in this Act or Schedule VI or in any rules or by-laws made in this behalf, or

(*c*) that any alterations required by any notice issued under sub-section (*2*) of section 307, have not been duly made,

they may, in addition to any prosecution that may be instituted under this Act, apply to a Magistrate and such Magistrate may make an order directing that such erection, alteration, or addition, as the case may be, or so much thereof as has been executed unlawfully as mentioned in clauses (*a*), (*b*) or (*c*), or that any structure specified in the application or plans or specification submitted under section 203 as a structure to be demolished or altered before the new building was erected or the material alterations or additions were made shall—

(*i*) be demolished by the owner thereof or altered by him to the satisfaction of the Commissioners, as the case may require, or

(*ii*) be demolished or altered by the Commissioners at the expense of the said owner.

(*2*) The Magistrate may make any order under this section notwithstanding the fact that a valuation of such building has been made by the Commissioners under Chapter V for the assessment of any rate or rates, but shall not make any such order without giving the owner of the building to be so demolished or altered full opportunity of adducing evidence and of being heard in his defence.

(*Chapter IX.—Buildings.—Clause 317.*)

Order for demolition or alteration of buildings in other cases.

317. (*1*) In any of the following cases, namely :— [New; *Cf.* Ben Act III of 1884, s. 344V.]

(*a*) if the owner of any building erected or added to between a street alignment and the building-line fails to remove such building or addition when called upon to do so under section 206, or

(*b*) if any person who makes any additions to a building in pursuance of an agreement executed under sub-section (*4*) of section 206, fails to remove such additions when called upon to do so, or

(*c*) if the owner of any building erected or added to under the proviso to sub-section (*1*) of section 206, fails to remove such building or addition when called upon to do so, or

(*d*) if, within the period prescribed in any notice requiring the owner or occupier of a building to comply with any condition on which the erection of any verandah or other projection was permitted under sub-section (*2*) of section 223, such condition is not complied with, or

(*e*) if, within the period prescribed in any notice issued under sub-section (*4*) of section 223 requiring the owner or occupier of a building to remove a verandah or other projection, the same be not duly removed, or

(*f*) if, within the period prescribed in any notice issued under sub-section (*2*) of section 309, requiring the owner of a building to remove or alter an external roof or wall made of inflammable material, the same be not duly removed or altered, or

(*g*) if the owners or occupiers neglect to execute any works or to take any measures required by any notice issued on them under sections 250, 348, 349, 351 or 364,

the Commissioners may in addition to any prosecution that may be instituted under this Act, apply to a Magistrate, and such Magistrate may make an order directing that the projection, building, portion of the building, block of buildings, verandah, fixture, additions, roof or wall, or huts as the case may be, shall—

(*i*) be demolished by the owner thereof or altered by him to the satisfaction of the Commissioners, as the case may be, or

(*ii*) be demolished or altered by the Commissioners at the expense of such owner.

(*2*) The Magistrate may make any order under this section notwithstanding the fact that a valuation of such building has been made by the Commissioners under Chapter V, for the assessment of any rate or rates, but shall not make any such order without giving the owner of the structure to be so demolished or altered full opportunity of adducing evidence and of being heard in his defence.

(*Chapter IX.—Buildings.—Clauses 318, 319.*)

Institution of prosecutions for offences referred to in section 316 or section 317.

318. Notwithstanding anything contained in section 516 or section 517 no prosecution for an offence referred to in section 316 or section 317 shall be instituted without the order or consent of the Commissioners at a meeting and the Commissioners before passing such order or giving such consent may give to the owner or occupier of the building an opportunity of showing cause why such prosecution should not be instituted. [New.]

Power of Commissioners to stop erection of new buildings in certain cases.

319. (*1*) In any case in which the erection of a new building, or any other work referred to in section 316 or section 317, has been commenced, or, is being carried on unlawfully as mentioned in those sections, the Commissioners may, by written notice, require the person carrying on such erection or other unlawful work to discontinue the same, pending the decision of a Magistrate on an application to be made to him under that section. [*Cf.* U. P. Act II of 1916, s. 263 (*2*); Ben. Act III of 1884, s. 244T.]

(*2*) If any notice issued under sub-section (*1*) is not duly complied with, the Commissioners may, with the assistance of the police if necessary, take such steps as they may deem needful in order to stop the continuance of the unlawful work.

(*3*) If it appears to the Commissioners that it is necessary, in order to prevent the continuation of the unlawful work, to depute any police or municipal officer to watch the premises, the cost of providing the same shall be borne by the person to whom the said notice was addressed.

CHAPTER X.

Bustees.

Preliminary.

Power to Commissioners to define limits of *bustee.*

320. (*1*) The Commissioners at a meeting may define the external limits of any *bustee*, and may from time to time alter such limits. [*Cf.* C. M. Act, s. 335.]

(*2*) None of the powers conferred by any of the following sections of this chapter shall be exercised in respect of— [*Cf.* C. M. Act, s. 336]

(*a*) any *bustee* the total area of which, as comprised within the limits defined under sub-section (*1*), is less than two bighas, or

(*b*) any masonry building existing in a *bustee* at the time when a standard plan is approved or alignments are prescribed under the provisions of this chapter for such *bustee* as the case may be.

Sanitary measures with regard to bustees.

Power of Commissioners as to inspection of huts.

321. (*1*) If it appears to the Commissioners at a meeting that the condition of any *bustee* is insanitary or attended with risk of disease to the inhabitants of the neighbourhood, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage, the impracticability of scavenging or for any other reason, they may after giving notice to the owners of the *bustee* cause the locality to be inspected by two persons appointed in this behalf, one of whom shall be a registered medical practitioner or a person holding the diploma of Public Health and the other an engineer. [*Cf.* C. M. Act, s. 344; Ben. Act. III of 1884, s. 245.]

(*2*) The said persons shall forthwith—

(*a*) sign and submit a written report on the insanitary condition of the said *bustee*,

(*b*) annex to the report a plan approved by them as the standard plan of such *bustee*, and

(*c*) specify in a schedule to be attached to the said report, as the improvements considered necessary to remove or abate the insanitary condition of the *bustee*,—

(*i*) the huts, which should wholly or in part be removed ;

(*ii*) the streets, passages, drains and sewers which should be constructed ;

(*iii*) the means of lighting, water-supply, common bathing arrangements and common privy accommodation to be provided for the use of the tenants ;

(*iv*) the tanks, wells and low lands which should be filled up ; and

(*v*) any other improvements they consider necessary in order to remove or abate the insanitary condition of the *bustee*.

(*3*) A report (together with the schedule annexed thereto) made and signed under this section shall be sufficient evidence of the result of such inspection.

(*Chapter X.—Bustees.—Clauses 322—325.*)

Power to serve notice.

322. On receipt of the said report, the Commissioners at a meeting after hearing the objections (if any) of the owners of the *bustee* in respect of which the report has been made may approve the plan and schedule after making such modifications (if any) therein as they may think fit and may require the said owners or the owners or occupiers of the huts referred to in sub-clause (*i*) of clause (*c*) of sub-section (*2*) of section 321, or both the owners of the *bustee* and the owners and occupiers of the huts, to carry out and execute, within a time to be fixed by the Commissioners for such purpose, all or any of the works specified in the aforesaid schedule or any portion thereof, respectively. [*Cf.* Ben Act III of 1884, s. 246.]

Payment of expense incurred in carrying out improvements.

323. When any improvements required by a notice under section 322 are carried out by the Commissioners under the provisions of this Act, all expenses incurred thereby, including such reasonable compensation as the Commissioners at a meeting may think fit to pay to the owners or occupiers of huts removed, shall be paid by the owners of the *bustee*, to the Commissioners, and shall constitute a charge upon such *bustee*: [*Cf.* C. M. Act, s. 347 Ben. Act III of 1884, s. 247.]

Provided that, notwithstanding anything contained elsewhere in this Act, if it appears to the Commissioners at a meeting that any such owner is unable, by reason of poverty, to pay such expenses, or any portion thereof, in the case of expenses relating to work, which should in the opinion of the Commissioners have been done by the owners or occupiers of huts within the *bustee*, they may order the same or any portion thereof to be paid out of the Municipal Fund, and in the case of expenses, which should be paid by the owner of the *bustee*, they may order the same or any portion thereof to be advanced out of the Municipal Fund, but thereafter to constitute a charge upon such *bustee*.

Disposal of material of huts pulled down.

324. (*1*) If, in carrying out any improvement required by a notice under section 322, the Commissioners cause any hut or portion of a hut to be pulled down, they shall— [*Cf.* C. M. Act, s. 348 Ben. Act III of 1884, s. 248.]

(*a*) cause the materials of such hut or portion of a hut to be given to the owner of the hut, if such owner elects to take them, or

(*b*) if the owner does not elect to take the materials, or if the owner be unknown or the title to the hut be disputed, cause such materials to be sold, and hold in deposit the proceeds of the sale, together with any sum awarded as compensation under section 323.

(*2*) Any amount held in deposit under clause (*b*) of sub-section (*1*) shall be so held by the Commissioners until any person obtains an order from a competent Court for the payment to him of such amount.

Power to purchase or acquire masonry buildings or lands in *bustee*.

325. (*1*) Any masonry building in a *bustee*, and any land appertaining to such building which it may be necessary to purchase or acquire for the purpose of making the streets or passages, or of effecting any of the improvements specified in the schedule referred to [*Cf.* C. M. Act, s. 344(4) (*f*), 349.]

(*Chapter X.—Bustees.—Clauses 326—328.*)

in section 321, shall be shown in the standard plan referred in that section, and the Commissioners may, at any time after the receipt of the report made under that section, purchase or acquire—

(*a*) any such masonry building, or

(*b*) any land appertaining to such building, or

(*c*) any such building, together with the land appertaining thereto or any portion thereof,

which is mentioned in that behalf in the schedule.

(*2*) Save as is provided in this section none of the powers conferred under the provisions of this chapter shall be exercised in respect of any building or land referred to in clauses (*a*), (*b*) or (*c*) of sub-section (*1*), but the fact that a masonry building or buildings is or are situated in a *bustee* shall not prevent action being taken with reference to such *bustee* under the provisions of this chapter.

Streets and passages shown in standard plan, if not public streets, to remain private

326. (*1*) Every street or passage in a *bustee* which is shown in a standard plan approved under this chapter for that *bustee* and which is not already a public street shall, unless the Commissioners and the owners of the land on which such street or passage is situated otherwise consent as provided in section 218, be deemed to be a private street; and the portion thereof which falls on the land of each owner shall belong to such owner: [*Cf.* C. M. Act, s. 354.]

Provided that any portion of any such street or passage which is situated on land purchased or acquired by the Commissioners under section 325 shall remain the property of the Commissioners.

(*2*) Every such private street shall, at all times, be kept open for scavenging purposes and for all other purposes of this Act in such manner as the Commissioners may require, and shall also be kept open for the use of all the tenants of the *bustee*:

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, no use of any such street shall, by reason of any lapse of time, be held to confer a right-of-way on the public so as to bring the street within the definition of a "public street". IX of 1908.

Bathing arrangements and privy accommodation in *bustee*, as shown in standard plan, to be kept open for use of tenants.

327. The bathing arrangements and privy accommodation in a *bustee*, which are shown in the standard plan approved under this chapter for such *bustee* as being common to the use of all or some of the tenants of the *bustee*, shall at all times be kept available for the use of such tenants: [*Cf.* C. M. Act, s. 355.]

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, if at any time the land on which any such bathing arrangements or privy accommodation are provided ceases to form part of such *bustee*, no such use shall, by reason of any lapse of time, be held to confer any right on any person so as prejudicially to affect the rights of the owner of such land. IX of 1908.

Owner of land in *bustee* to maintain certain conveniences on his land.

328. (*1*) The owner of any land in a *bustee* for which a standard plan has been approved under this chapter shall maintain in proper order and repair, to the satisfaction of the Commissioners, such streets, passages, drains, common bathing arrangements, common [*Cf.* C. M. Act, s. 356.]

(*Chapter X.—Bustees.—Clause 329.*)

privy accommodation, means of lighting, means of water-supply and other works on such land as may be shown in the plan.

(2) The Commissioners may, at any time, cause a written notice to be served upon such owner requiring him so to maintain such streets, passages, drains, common bathing arrangements, common privy accommodation, means of lighting, means of water-supply and other works:

Provided that any convenience made by the owner of a hut for his own use shall, subject to such notice as aforesaid, be maintained by him, and not by he owner of the *bustee*.

Power to owner to take land out of the category of *bustee* in certain cases.

329. (*1*) The owner of any land included in a *bustee* and forming a separate holding may, at any time, whether or not a standard plan has been prepared for the *bustee*, notify the Commissioners in writing that he intends to remove all the huts standing on such land. [*Cf.* C. M. Act, s. 359.]

(*2*) The receipt of any such notice shall not debar the Commissioners from approving a standard plan of such *bustee*.

(*3*) From the date of such notice no application shall be entertained for erecting on such land any hut or adding to any hut standing thereon.

(*4*) Such owner shall, within six months after the date of such notice, or within such further time as the Commissioners at a meeting may from time to time allow, remove all huts standing on such land; and if he does not do so, the notice shall be deemed to be cancelled.

(*5*) When all such huts have been so removed, such land shall according to its situation either—

(*i*) be altogether excluded from the limits of the *bustee*, or

(*ii*) be shown, in a standard plan approved for the *bustee* under this chapter, as not being a part of such *bustee*:

Provided that if, in the standard plan, any street or passage is shown on such land, the provisions of sections 326 and 328 shall, with all necessary modifications, be deemed to apply to such street or passage, unless the Commissioners at a meeting otherwise direct.

(*6*) If after all the huts have been removed under sub-section (*4*) any application is received for erecting any hut on such land, the Commissioners may, by written notice, require the owner of the land to carry out such improvements included in the standard plan as they may think fit.

(*7*) When all the huts standing on any land within a *bustee* have been removed under sub-section (*4*), the Commissioners at a meeting may either—

(*a*) cancel the standard plan (if any) already approved, under this chapter, for such *bustee*, or

(*b*) modify such plan, after hearing the objections (if any) of any owner of land included in such *bustee*.

(*Chapter X.—Bustees.—Clauses 330, 331.*)

(*8*) When any land, formerly included in a *bustee*, ceases to be so included, and where any street or passage was shown on such land in the standard plan, and where, on such land ceasing to be so included, the Commissioners at a meeting do not consider it to be practicable, or do not consider it to be expedient to change the alignment of such street they shall, in applying the proviso to sub-section (*5*) to such street, compensate the owner of such land for any area that is included in such street, which is in excess of one-seventh of the entire area of the land, which ceases to be included in the *bustee*.

Power to Commissioners to prescribe alignments for *bustee* streets.

330. (*1*) In any *bustee*, in respect of which a standard plan has not been prepared, or in any area in which it appears to the Commissioners that huts are likely to be erected, the Commissioners at a meeting may after hearing the objections, if any, of any owner of land in such *bustee*, prescribe alignments, not more than sixteen feet in width, for such private streets as they may think fit. [*Cf.* C. M. Act, s. 360.]

(*2*) When the land within such *bustee* or area is owned by more owners than one, each owning one or more separate plots of such land, such alignments shall, as far as practicable, be so prescribed as not to occupy, within any such plot, more than one-fifth of the area thereof, and shall not ordinarily be less than two hundred and fifty feet apart.

(*3*) If, in any such plot, more than one-fifth of the area thereof is occupied by such alignments, the Commissioners shall pay reasonable compensation to the owner of the plot:

Provided that no such compensation shall be paid in respect of any such plot as long as any hut or other structure other than a masonry building is left standing in the plot within any such alignment.

(*4*) No hut or portion of a hut shall be erected within any alignment prescribed under sub-section (*1*).

(*5*) The provisions of section 326 shall, with all necessary modifications, be deemed to apply to every street, the alignment for which has been prescribed under this section.

Power to Commissioners to require removal of existing huts within street or hut alignment in *bustee*.

331. (*1*) In any *bustee*, at any time after the expiration of seven years from the time when any alignment has been prescribed for a street or for huts under section 330 the Commissioners at a meeting may, by written notice, require the owner of the land or the owners or occupiers of existing huts to remove such huts or portions thereof as fall— [*Cf.* C. M. Act, s. 361.]

(*i*) within any such prescribed street alignment, or

(*ii*) within six feet on either side of any such prescribed hut alignment,

as the case may be.

(*2*) When a hut has been removed under the provisions of sub-section (*1*) the Commissioners at a meeting shall pay to the owner thereof such compensation as they may consider to be reasonable, but such compensation shall in no case exceed the value of the hut less the value of the materials thereof.

(*Chapter X.—Bustees.—Clause 332.*)

Power to Commissioners to require space to be kept between masonry building in *bustee* and centre line of *bustee* street.

[Cf. O. M. Act, s. 362]

332. Any person who erects a masonry building—

(*a*) in any *bustee* in respect of which a standard plan has been approved under section 322, or

(*b*) in any *bustee* or area in respect of which alignments for streets have been prescribed under section 330,

shall, if so required by written notice issued by the Commissioners at a meeting, leave a clear space of fifteen feet between the centre line of any street or passage shown in such plan, or of any street, the alignment for which has been so prescribed, as the case may be, and the nearest part of such building.

CHAPTER XI.

PURITY OF WATER-SUPPLY.

Power to set apart wells, tanks, etc., for drinking, culinary, bathing and washing purposes.

[*Cf.* Ben Act III of 1884, s. 199.]

333. The Commissioners may, by order published at such places as they think fit, set apart any tank, well, spring or water-course or any part thereof, vested in or under their control, or with the consent of the owner thereof any tank, well, spring, or water-course or part thereof subject to any rights which the owner may retain with the consent of the Commissioners for any of the following purposes, namely,—

(*a*) for the supply of water for drinking or for culinary purposes or for both, or

(*b*) for the purpose of bathing, or

(*c*) for washing animals or clothes, or

(*d*) for any other purpose connected with the health, cleanliness or comfort of the inhabitants,

and may by like order prohibit bathing or the washing of animals or clothes or other things at any public place not set apart for that purpose, or at any time or by a sex other than that specified in the order and may in like manner prohibit any other act by which water in public places may be rendered foul or unfit for use or which causes or is likely to cause inconvenience or annoyance to persons lawfully using such places.

Power to req cleansing of sources of water for drinking culinary purposes.

[*Cf.* U P Act III of 1916, s 225 (*1*); B. & O. Act VII of 1922, s 229.]

334. The Commissioners may, by notice, require the owner of, or the person having control over, a private tank, well, spring, or water-course or other place, the water of which is used for drinking or culinary purposes, to clean the same from time to time of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as to the Commissioners may seem fit, and in the case of a well to repair the same.

Power to prohibit use of polluted water for drinking or culinary purposes.

[*cf.* B & O Act VII of 1922, s. 230.]

335. If the Commissioners at a meeting after due inquiry are satisfied that the water of any tank, well, spring or water-course, or part thereof, or other place, used or likely to be used for drinking or culinary purposes, is, if so used, liable to engender or cause the spread of disease, and that owing to its situation or other cause such place cannot effectively be protected from pollution, or if the owner of, or person having control over, any such place refuses or neglects to comply with a requisition of the Commissioners under section 334, the Commissioners may—

[*Cf.* Ben. Act III of 1884, ss. 199A, 217.]

(*a*) by public notice prohibit the use or removal of water from such place for drinking or culinary purposes during a period to be specified in the notice, and take such steps as they may consider necessary to prevent the use or removal of water for such purposes, or

(*b*) in the case of a private well, require the owner of, or person having control over it to close it permanently or to fill it up with suitable material.

(*Chapter XI.—Purity of Water-supply —Clauses 336-338.*)

Power to inspect and disinfect sources of water used for drinking or culinary purposes

336. The Commissioners or any person authorised by them in this behalf may, at all reasonable times, inspect and disinfect any tank, well, spring or water-course or other place from which water is, or is likely to be, taken for drinking or culinary purposes. [*Cf.* U. P. Act II of 1916, s. 226.]

Analysis of water for drinking or culinary purposes.

337. (*1*) The Local Government may make rules to provide for the proper analysis of the water of any water-works, tank, well, spring or water-course or other place, used or likely to be used for drinking or culinary purposes in any municipality and in particular may— [New.]

(*a*) require the Commissioners to make over at such times and places and to such person or persons as the Director of Public Health may appoint in this behalf, samples of water taken under such precautions and in such manner as the Director of Public Health may prescribe,

(*i*) from the water-works of the Commissioners where any exist, or

(*ii*) where no water-works exist or where any water used for domestic or culinary purposes is drawn from any tank, well, spring or water-course or other source of supply, then from any such tank, well, spring or water-course or other source of supply as the Director of Public Health may at any time specify in this behalf;

(*b*) prescribe a scale of fees to be paid by the Commissioners for the analysis which shall be made of the aforementioned samples under the direction of the Director of Public Health.

(*2*) Where any tank, well, spring or water-course of other source of supply is not within the control of the Commissioners, they shall nevertheless have full power to take water in such manner as they may think proper from any of the above sources of supply for the purpose of furnishing samples to the Director of Public Health.

Application for analysis by Public Analyst of water for domestic purposes.

338. On the representation of two qualified medical practitioners or ten or more persons to the Commissioners of any municipality within whose jurisdiction they reside, that within the municipality the water in any tank, well, spring or water-course, public or private, used or likely to be used for drinking or culinary purposes or for the manufacture of ærated or other drinks for human consumption is so polluted as to be injurious to health, the Commissioners shall forward a sample of such water to the Public Analyst for analysis at the cost of the Commissioners and if the Public Analyst certifies that such water, if used for drinking or culinary purposes, is liable to engender or cause the spread of disease, the Commissioners shall take measures to remedy the same or require the owner or person having control over such source of supply to take such measures for this purpose as to the Commissioners may seem fit, or if [*Cf.* P. H. English Act, 1875, s. 70.]

(Chapter XI.—Purity of Water-supply—Clauses 339, 340.)

such source of supply cannot in their opinion effectively be protected from pollution, then the Commissioners shall make such order as they think proper and are empowered to make under this Act:

Provided that if the Commissioners are of opinion for reasons to be stated in writing that any representation made under this section is frivolous or vexatious, they may, before forwarding a sample of the water to the Public Analyst, require the persons making the representation to deposit the cost of the analysis, which shall be refunded in the event of the Public Analyst granting the certificate referred to in this section.

Fees for analysis of water

339. Where the Commissioners have appointed a person to be the Public Analyst for the area under their control under section 3 of the Bengal Food Adulteration Act, 1919, the Local Government may, with the consent of the Commissioners, direct that any analysis prescribed under sections 337 and 338 of this Act shall be made by such analyst on the payment of such fees by the Commissioners for whom the analysis may be made, as the Local Government may fix. [New.] Ben. Act VI of 1919

By-laws relating to Public Water-supply, etc.

Power to make by-laws

340. The Commissioners at a meeting may make by-laws regulating the use of, and the prevention of nuisances in regard to, the public water-supply, bathing and washing places, streams, channels, tanks and wells. [Cf Ben. Act III of 1884, s. 350(b).]

CHAPTER XII.

INSANITARY AND DANGEROUS PROPERTY.

Power to direct the filling up etc., of unwholesome wells, pools, etc.

341. (*1*) When—

(*a*) any well, pool, ditch, tank, pond, pit or marshy or undrained ground, or

(*b*) any cistern, reservoir or water-butt or any other receptacle or place where water is stored or accumulates, or

(*c*) any waste or stagnant water, whether within any private enclosure or not,

[*Cf.* C. M. Act, Sch. XVIII, r. 7; Ben. Act III of 1884, ss 199 and 200.]

appears to the Commissioners to be or to be likely to become injurious to health or offensive to the neighbourhood, they may, by written notice, require the owner or occupier of the land or building to which such well, cistern, reservoir, water-butt or receptacle pertains, or of the land, as the case may be, in which such pool, ditch, tank, pond, pit, ground, place or water is situated, at the expense of such owner or occupier—

(*i*) to cleanse the same, or
(*ii*) to re-excavate the same, or
(*iii*) to fill up the same with suitable material, or
(*iv*) to drain off or to remove water from the same,

or to take such other order therewith as the Commissioners may deem necessary within such period as may be specified in the notice.

(*2*) If the Commissioners, in exercise of the powers conferred under this Act, execute any work referred to in a notice issued under sub-section (*1*), and if the person liable to pay the expenses of such work fails to pay the same, the Commissioners may, until such expenses are paid,—

(*i*) take over and let out on lease any part of the land used in connection with the said well, pool, ditch, tank, pond, pit, cistern, reservoir, water-butt, receptacle, place or water, or any part of the said ground, as the case may be, or

(*ii*) retain possession of the same, or the site thereof, and utilize it for public purposes.

(*3*) If the said expenses be paid by an occupier of land, he may in the absence of any agreement to the contrary deduct the same from any rent due to the owner of the land.

Power to Commissioners to regulate excavations.

342. (*1*) No person shall, within a municipality without the special permission of the Commissioners, make an excavation for the purpose of taking earth therefrom, or for the making of bricks or for the purpose of storing rubbish or offensive matter therein or dig any cess-pools, tanks, ponds, wells or pits:

[*Cf.* C. M. Act, s. 448 and Sch. XVIII, r. 9; Ben. Act III of 1884, ss. 282, 270.]

Provided that the Commissioners at a meeting may make such general exemptions from the provisions of this section as may appear to them to be necessary for the public convenience.

(*2*) If any such excavation, cess-pool, tank, pond, well or pit is made or dug without the permission required under sub-section (*1*), the Commissioners may, whether the offender be prosecuted or not, by written notice require the owner or occupier of the

(Chapter XII.—Insanitary and Dangerous property—Clauses 343—345.)

land on which the same is made or dug to fill up the same with earth or other material approved by the Commissioners within such time as may be specified in the notice.

Wells, tanks, etc., to be secured.

343. (*1*) If any well, tank or other excavation, whether on public or private ground, is, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith cause a written notice to be served on the owner, if he be known and resident in the municipality, and also to be put on some conspicuous part of the premises or served on owners or occupiers (if any) of the land on which such tank, well or other excavation is situated requiring such owner or occupier forthwith properly to secure or protect such well, tank or other excavation. [*cf.* Ben Act III of 1884, s 209.]

(*2*) The Commissioners may also, if it appears to them to be necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the cost of the owner or occupier of such land for the safety of the public.

Power to prohibit cultivation, use of manure or irrigation injurious to health, and to remove growth of water-hyacinth and other noxious plants.

344. If the Commissioners at a meeting after due inquiry, are satisfied that the cultivation of any description of crop, or the use of any kind of manure or the irrigation of land in any specified manner— [*cf.* Pun. Act III of 1911, s. 120; C. P. Act XVI of 1903, s 98.]

(*a*) in any place within the limits of the municipality, is injurious, or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood, or

(*b*) in any place within or without the limits of the municipality, is likely to contaminate the water-supply of the municipality or otherwise render it unfit for drinking or culinary purposes,

or that any person is permitting the growth within or without the limits of the municipality of water-hyacinth, or such other noxious plant as may be certified in this behalf by the Local Government as being a danger to the health of persons resident within the limits of the municipality or to navigation within those limits

the Local Government may, on receipt of an application from the Commissioners, by public notice, prohibit the cultivation of such crop, the use of such manure, or the use of the method of irrigation so certified to be injurious, or impose such conditions with respect thereto as may prevent the injury or, in the case of water-hyacinth or such other noxious plant as may be in this behalf notified, may impose such regulations as may secure the removal of the same:

Provided that, if the act prohibited has been practised in the ordinary course of husbandry at any time during the five successive years last preceding the date of the prohibition, compensation shall be paid from the Municipal Fund to all persons interested therein for any damage caused to them by such prohibition.

Power to inspect premises for sanitary purposes.

345. The Commissioners may inspect any building or other premises for the purpose of ascertaining the sanitary condition thereof: [*cf.* O. M. Act, Sch. XVIII, r. 1 (*1*).]

Provided that no such inspection shall be made at night except by an officer specially authorized by the Commissioners in this behalf:

(Chapter XII.—Insanitary and Dangerous property.—Clauses 346—349.)

Power to require cleansing and limewashing of building

346. If it appears to the Commissioners necessary for sanitary reasons so to do, they may, by written notice, require the owner or occupier of any building inspected under section 315 to cause the same or any portion thereof to be lime-washed or otherwise cleansed, either externally or internally or both externally and internally.

[*Cf* O M. Act, Sch XVIII r 2]

Power to require owners to clear noxious vegetation and to improve bad drainage

347. Whenever any land being private property, or within any private enclosure, appears to the Commissioners, by reason of thick vegetation, undergrowth or jungle, or inequalities of surface, or by want of drainage, to be in a state injurious to health or offensive to the neighbourhood or forming an impediment to sufficient ventilation, the Commissioners at a meeting may require the owners or occupiers, or the owners and occupiers, of such land, within fifteen days, to clear and remove such vegetation, or dress such surface or drain such land:

Provided that, if for the purpose of effecting any drainage under this section it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

[*Cf* Ben Act III of 1884, s 195]

Power to demolish, repair or secure wall building or fixture in a ruinous state, etc

348. (*1*) If any wall or building, or anything affixed thereto, be deemed by the Commissioners to be in a ruinous state, or likely to fall, or to be in any way dangerous, they shall forthwith cause a written notice to be served on the owner, if he be known and resident in the municipality, and also to be put on some conspicuous part of the wall or building or served on the occupier (if any) of the building requiring such owner or occupier forthwith to demolish, repair or secure such wall, building or thing as the case may require.

[*Cf* O M Act, Sch XVIII, r 4, Ben Act III of 1884, s 240]

(*2*) The Commissioners may also, if it appears to them to be necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building for the safety of the public or the inmates thereof; and may also, after giving them such notice as the Commissioners may think necessary, require the inmates of the building to vacate it.

(*3*) So far as they are in force in the municipality the provisions of this Act and of Schedule VI, and of any rules or by-laws made under this Act relating to buildings shall apply to any work done in that municipality in pursuance, or in consequence, of a notice issued under sub-section (*1*).

Power to prevent public danger, etc, from insecure or insanitary buildings

349. (*1*) Whenever the Commissioners at a meeting consider—

[*Cf* O M. Act, Sch XVIII, r 6, Ben Act III of 1884, s 242]

(*a*) that any building is, by reason of its having no plinth or having a plinth of insufficient height, or by reason of the want of proper drainage or ventilation or by reason of the impracticability of cleansing, attended with risk to the health of the occupiers thereof or to the inhabitants of the neighbourhood, or is, for any reason, likely to endanger the public health, or

(*Chapter XII.—Insanitary and Dangerous property.—Clause 350.*)

(*b*) that a block or group of buildings is, for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid,—

they may by notice require the owners or occupiers of such building or buildings or portions thereof, or, at the option of the Commissioners, the owners of the land occupied by such building or buildings or portions thereof, to execute such works or to take such measures as they may deem necessary for the prevention of such risk.

(*2*) No person shall be entitled to compensation for damages sustained by reason of any action taken under or in pursuance of this section, save when the building is demolished to the extent of more than half of its cubical contents in pursuance of an order made thereunder, in which case the Commissioners shall pay reasonable compensation to the owners thereof.

(*3*) When any building is entirely demolished under this section and the demolition thereof adds to the value of other buildings in the immediate vicinity, the owners of such other buildings shall be bound to contribute towards the compensation payable to the owner of the first named building in proportion to the increased value accruing to their own premises.

The amount of such contribution and the proportions in which it is to be divided among the owners of such other buildings shall be determined by the Commissioners at a meeting and shall be recoverable as though it were a rate under the provisions of Chapter V.

(*4*) When any building though not entirely demolished under this section is demolished to the extent of more than half of its cubical contents, allowance shall be made in determining the compensation for the benefit accruing to the premises from the improvement thereof.

Procedure in case of buildings deemed unfit for human habitation.

350. (*1*) If, for any reason, any building or portion of a building intended for, or used as, a dwelling place appears to the Commissioners at a meeting to be unfit for human habitation, they may require the owner or occupier of such building to make such alterations as they think necessary in the building in order to make it fit for human habitation, if they consider that this can be done, but whether they think that it can be made fit for human habitation or not, they may, in either case, after giving the owner or occupier an opportunity of being heard, apply to a Magistrate to prohibit the further use of such building or portion thereof for such purpose ; [*Cf.* C. M. Act, s. 381 ; Ben. Act III of 1884, ss. 242, 244X.]

and the Magistrate shall serve a notice on such owner or occupier so as to give him an opportunity of being heard in the Court, and after such inquiry as he thinks fit to make, may, by written order, prohibit the further use thereof, or may pass such other order as he may deem just and proper.

(Chapter XII.—Insanitary and Dangerous property—Clause 351.)

(*2*) When any such prohibition has been made, the Commissioners may—

(*i*) inspect such building by day or by night, and
(*ii*) take such order as may be necessary to preclude the further use of the same, or of the portion specified in the prohibition as a human habitation.

(*3*) When any such prohibition has been made, no owner or occupier of such building shall use, or suffer the same, or the portion specified in the prohibition, to be used for human habitation until—

(*a*) the Chairman certifies in writing that the causes rendering it unfit for human habitation have been removed to his satisfaction, or

(*b*) the Magistrate, by written order, withdraws the prohibition.

(*4*) The Commissioners shall prepare and maintain at the Municipal Office a list of buildings in respect of which the Magistrate has passed an order under sub-section (*1*) and, such list shall contain such particulars as to the action taken by the Commissioners or the owner in pursuance of such order or otherwise, as the Chairman shall think fit and shall be open to inspection by the public free of charge.

Power to Commissioners to require demolition of building unfit for human habitation.

351. (*1*) When a Magistrate has prohibited the use of a building for human habitation under section 350 and such prohibition has been in force for three months, the Commissioners at a meeting shall take into consideration the question of the demolition of such building, [*Cf.* C M Act, s. 382.]

and shall give notice of the time (being some time not less than one month after the service of the notice) and place at which such question will be considered to the owner, and to the occupier (if any) of the building,

and the said owner and occupier shall be entitled to be heard when the question is so taken into consideration.

(*2*) If, upon such consideration, the Commissioners are of opinion that the building has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit,

they shall cause a written notice to be served on the said owner and occupier and also to be put on some conspicuous part of such building, requiring such owner and occupier to demolish the building or any portion thereof as the case may be or to execute such work as in the opinion of the Commissioners at a meeting may be necessary to render the building fit for human habitation.

(*3*) If such owner or occupier undertakes to execute with due diligence the work necessary to render the building fit for human habitation, and the Commissioners consider that it can be so rendered fit for human habitation,

the Commissioners may postpone the operation of the said notice for such time as they think sufficient for the purpose of giving the said owner or occupier an opportunity of executing the necessary work.

(Chapter XII.—Insanitary and Dangerous property—Clauses 352, 353.)

Abatement of overcrowding in dwelling-house or dwelling-place.

[Cf. Mad. Act V of 1920, s. 238; Ben Act III of 1884, s. 244Y.]

352. (*1*) If it appears to the Commissioners that any dwelling-house or other building which is used as a dwelling-place, or any room in such dwelling-house or building, is so overcrowded as to endanger the health of the inmates thereof, they may apply to a Magistrate to abate such overcrowding; and the Magistrate, after such inquiry as he thinks fit to make, may, by written order, require the owner of the building, or room, within a reasonable time not exceeding four weeks to be specified in the said order, to abate such overcrowding by reducing the number of lodgers, tenants or other inmates of the building or room, or may pass such other order as he may deem just and proper.

(*2*) The Commissioners at a meeting may, by written order, declare what amount of superficial and cubic space shall be deemed for the purposes of sub-section (*1*) to be necessary for each occupant of a building or room.

(*3*) If any building or room referred to in sub-section (*1*) has been sublet, the landlord of the lodgers, tenants, or other actual inmates of the same, shall, for the purposes of this section, be deemed to be the owner of the building or room.

(*4*) Notwithstanding any thing contained in any law or in any contract to the contrary it shall be incumbent on every tenant, lodger or other inmate of a building or room to vacate on being required by the owner so to do in pursuance of any requisition made under sub-section (*1*).

Prevention of danger from ruinous buildings, etc.

[Cf. U. P. Act II of 1916, s. 263 (2).]

353. Notwithstanding anything contained in this Act, where it appears to the Commissioners that immediate action is necessary for the purpose of preventing imminent danger to person or property from any building, wall, bank or other structure or anything affixed thereto or to remove any tree or other thing, which appears to them to be a source of imminent danger to person or property, the Commissioners may take such immediate action themselves; and in such a case, it shall not be necessary for the Commissioners to give notice, if it appears to them that the object of taking such immediate action would be defeated by the delay incurred in giving notice.

CHAPTER XIII.

OFFENSIVE AND DANGEROUS TRADES, OCCUPATIONS OR PROCESSES.

Power to prohibit certain offensive and dangerous trades without license.

354. (*1*) No person shall use or permit to be used any place within such local limits as may be fixed by the Commissioners at a meeting without a license from the Commissioners (which shall be renewable annually) for any of the following purposes, namely:— [Cf. Ben. Act III of 1884, s. 261.]

(*i*) for the slaughter of animals for purposes other than the sale of their flesh for human consumption; or

(*ii*) for the skinning or disembowelling of animals; or

(*iii*) for storing hides, fish, horns or skins; [Cf. U. P. Act II of 1916, s. 298 (G) (a) (ii)]

(*iv*) for boiling or storing offal, blood, bones or rags; or

(*v*) for melting tallow; or

(*vi*) for tanning or for the manufacture of leather or leather goods; or [Cf. U. P. Act II of 1916, s. 298 (G) (iv).]

(*vii*) for oil-boiling; or

(*viii*) for soap-making; or

(*ix*) for dyeing; or

(*x*) for burning or baking bricks, tiles, pottery or lime, whether for trade or private purposes: or [Cf. Ben. Act III of 1884, s. 262A.]

(*xi*) as a depôt for trade in coal; or

(*xii*) for storing kerosine, petroleum, naphtha, or any inflammable oil or spirit; or

(*xiii*) for trading in, or storing for other than his own domestic use, hay, straw, wood, thatching grass, jute or other dangerously inflammable material; or

(*xiv*) for any manufacture, process or business from which offensive or unwholesome smells or offensive noises may arise; or

(*xv*) for any trade, process or business which the Local Government may, by notification, declare to be a trade, process or business which requires to be regulated under the provisions of this chapter.

(*2*) A license for any of the purposes mentioned in sub-section (*1*) shall not be withheld unless the Commissioners at a meeting have reason to believe that the business which it is intended to establish or maintain would be the cause of annoyance, offence or danger to persons residing in or frequenting the immediate neighbourhood or that the area should be for general reasons kept clear of the establishment of such business.

(*3*) The Commissioners at a meeting may, in accordance with a scale of fees to be prepared by them from time to time and approved by the Local Government, levy a fee in respect of any such license and the renewal thereof, and may impose such conditions as to supervision, inspection, conservancy and other matters upon the grant of any such license as they may think necessary.

(Chapter XIII.—Offensive and dangerous trades, occupations or processes.—Clauses 355-358.)

(*4*) The grant of a license for the purposes mentioned in clause (*xii*) of sub-section (*1*) shall be consistent with the provisions of the Indian Petroleum Act, 1899, and no such license shall be granted unless the said provisions have been complied with by the applicant for the license. [*Cf.* U. P. Act II of 1916, s. 29(*a*).] VIII of 1899

Power to order the carrying on of dangerous and offensive trades to be discontinued.

355. If it appears to the Commissioners at a meeting that the business carried on at any place licensed under section 354 is a cause of annoyance or offence to persons residing in or frequenting the immediate neighbourhood or of danger to health, they may, notwithstanding anything contained in the said section, after giving one month's notice to the licensee, cancel his license : [*Cf.* Ben Act III of 1884, s. 262.]

Provided that the Commissioners shall refund so much of the fee levied under section 354 as may be proportionate to the unexpired portion of the year for which the license was granted.

Licensing of places for keeping horses and cattle.

356. (*1*) No dairyman, cartman, livery stable-keeper or keeper of hackney carriages shall keep horses, ponies, cattle or other four-footed animals for the purposes of trade or business except in a place licensed by the Commissioners. [*Cf.* Ben. Act III of 1884, s. 263.]

(*2*) Licenses granted under sub-section (*1*) shall be subject to such conditions as the Commissioners at a meeting may impose in respect of the site, construction, materials and dimensions of any structure erected for keeping horses, ponies, cattle or other four-footed animals, and in respect of the fencing, drainage, cleansing and in any other matter relating to the regulation of such places as they may think necessary.

Commissioners may provide public stables.

357. (*1*) The Commissioners at a meeting may provide public stables for the accommodation of horses and cattle and may direct that, within such limits as they shall at a meeting determine, no person shall keep horses or cattle, exceeding ten in number, for the purpose of trade or business, except in such public stables, or in places licensed under section 356. [*Cf.* Ben. Act III of 1884, s. 264.]

(*2*) The Commissioners at a meeting may charge such reasonable fees as they shall think fit for the use of such public stables.

(*3*) The Commissioners at a meeting may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

(*4*) It shall be in the discretion of the Commissioners at a meeting to grant any such license subject to such conditions as they may think fit.

Conditions for keeping pigs, sheep and goats.

358. (*1*) Within such limits as the Commissioners at a meeting may direct, no person shall keep pigs or in any place more than twenty sheep or twenty goats without a license from the Commissioners, which shall be renewable annually. [*Cf.* Ben. Act III of 1884, s. 265.]

(*Chapter XIII.—Offensive and dangerous trades, occupations or processes.—Clause 359.*)

(2) The Commissioners at a meeting may charge an annual fee not exceeding two rupees for such license, and in respect of such license may impose such conditions as to fencing, drainage, paving, cleansing and other matters for the regulation of such places as they may think necessary.

Power to make by-laws regulating places used for offensive trades, etc.

359. The Commissioners at a meeting may make by-laws— [*Cf.* U. P. Act II of 1916, s. 298-G(c).]

(*a*) providing for the inspection and regulation of the conduct of business in a place used for any of the purposes mentioned in section 354, so as to secure cleanliness therein, or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom ;

(*b*) regulating or prohibiting for the prevention of any public annoyance or inconvenience or for the purpose of preventing danger to the public health, the stalling of elephants, horses, camels, cattle, donkeys, sheep or goats; [*Cf.* U. P. Act II of 1916, s. 298-I(*a*).]

(*c*) regulating or prohibiting for the prevention of any public annoyance or inconvenience or for the purpose of preventing danger to the public health, the place and manner of stalling pigs, and

(*d*) to prevent the straying of pigs.

CHAPTER XIV.

RESTRAINT OF INFECTION.

Duty of Commissioners in case of epidemic.

360. If the Commissioners have good reason to believe that any dangerous disease has appeared or is likely to appear in epidemic form within the municipality, they shall promptly investigate the matter, secure the prompt and thorough isolation of those sick or infected with such disease, so long as there is danger of their communicating the disease to other persons; see that no person suffers for lack of nurses or other necessaries because of isolation for the public good; give public notice of infected places by placard on the premises and otherwise, if necessary, promptly notify head teachers of schools concerning families any of the members of which are suffering from dangerous diseases; supervise funerals of persons dead from such diseases, disinfect rooms, clothing and premises, and all articles likely to be infected; and generally so exercise the powers conferred on them by this Act as to guard and protect the public health and do such things as may be necessary to check and prevent the spread of the disease. [Cf. S. African P. H. Act, 1919.]

Information to be given of dangerous disease.

361. Whoever,— [Cf. Punjab Act III of 1911, s. 141.]

(a) being a medical practitioner or a person openly and constantly practising the medical profession, and in the course of such practice becoming cognizant of the existence of any dangerous disease in any building other than a public hospital; or, in default of such medical practitioner or person practising the medical profession,

(b) being the owner or occupier of such building and being cognizant of the existence of any such disease therein; or, in default of such owner or occupier,

(c) being the person in charge of, or in attendance on, any person suffering from any such disease in such building, and being cognizant of the existence of the disease therein,

fails to give information to such officer as the Commissioners may direct, or gives false information respecting the existence of such disease, shall be punishable with fine as provided in this Act:

Provided that a person not required to give information in the first instance, but only in default of some other person, shall not be punishable if it be shown that he had reasonable cause to suppose that the information had been, or would be, duly given.

Power to Commissioners to remove patient to hospital in certain cases.

362. (1) When, in the opinion of any registered medical practitioner any person is suffering in any municipality from any dangerous disease and is also without proper lodging or accommodation or is lodged in such a manner that he cannot be effectually isolated so as to prevent infection or contagion, and the said practitioner considers that such person should be removed to a hospital or place at which [Cf. C. M. Act, s. 436.]

(*Chapter XIV.—Restraint of infection.—Clause 363.*)

patients suffering from such disease are received for medical treatment, he may send a certificate to that effect to the Commissioners.

(*2*) On receipt of any such certificate, the Commissioners may direct or cause the removal of such person to such hospital or place:

Provided that all costs incurred for the removal and in the treatment of any such patient may be borne by the Commissioners:

Provided also that, if any such person is a female, she shall not be removed to any such hospital or place unless the same has accommodation for females, and set apart from the portion assigned to males.

(*3*) The person (if any) who has charge of a person in respect of whom an order is made under sub-section (*2*), shall obey such order.

(*4*) If any female who, according to the custom of the country, does not appear in public, be removed to any hospital or place under sub-section (*2*)—

(*a*) the removal shall be effected in such a way as to preserve her privacy;

(*b*) special accommodation suited to such custom shall be provided for her in such hospital or place;

(*c*) one female relative or attendant shall be allowed to remain with her.

(*5*) The Commissioners at a meeting may provide nurses for attendance on patients suffering from any dangerous disease in the municipality who, owing to want of hospital accommodation or danger of infection or contagion, cannot be removed to hospital or in cases where removal to the hospital is likely to endanger the patient's health; and may charge such reasonable fees for the services of and fix the qualifications, duties and salaries of such nurses.

Power to cleanse or disinfect buildings, tank, etc.

363. (*1*) If the Commissioners are of opinion— [New.]

(*a*) that any building or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or

(*b*) that the cleansing, limewashing or disinfecting, as the case may be, of any building or any part of a building or of any tank or pool or well adjacent to a building, or that the cleansing, disinfection, purification or destruction of any article therein which is likely to retain infection or by reason of its filthy condition likely to cause injury to the health of any person, would tend to check or prevent the spread of any dangerous disease,

they may cause such building or part thereof to be cleansed, limewashed or disinfected or such tank, pool, well or article to be cleansed, disinfected or purified or such article to be destroyed and may, by written

(Chapter XIV.—Restraint of infection.—Clauses 364, 365.)

notice, require the occupier of such building or any part thereof to vacate the same for such time as may be prescribed in such notice.

(2) The cost of such cleansing or disinfecting shall be paid by the occupier of the building, or in the case of any tank, pool or well not let out with a building by the owner or occupier of the holding in which such tank, pool or well is situated according as the Commissioners at a meeting may determine :

Provided that—

(a) if, in the opinion of the Commissioners at a meeting, the occupier is from poverty unable to pay the said cost, the Commissioners shall direct payment thereof to be made from the Municipal Fund, and [Cf. P. H. Act, 1875, s. 120: and P. H. Acts Amendment Act, 1907, s. 56.]

(b) the Commissioners shall provide temporary shelter or house accommodation for the members of any family in which any dangerous disease has appeared who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected for any part of a night.

(3) Where a person sustains damage in consequence of the destruction of any article under this section, and the condition of such article is not attributable to the act or default of such person, the Commissioners at a meeting shall make reasonable compensation to that person.

Power to Commissioners to destroy huts and sheds.

364. (1) If the Commissioners are of opinion that the destruction of any hut or shed is necessary to prevent the spread of any dangerous disease, they may, after giving to the owner or occupier of such hut or shed such previous notice of their intention as may in the circumstances of the case appear to them to be reasonable, take measures for having such hut or shed and all the materials thereof destroyed. [Cf. C. M. Act, s 440.]

(2) The Commissioners at a meeting shall make such compensation not exceeding the value of the hut as they think proper to any person who sustains loss by the destruction of any such hut or shed, but except as so allowed by the Commissioners, no claim for compensation shall lie for any loss or damage caused by any exercise of the power conferred by sub-section (1).

Infected building not to be let.

365. No person shall knowingly let a dwelling-house or other building or part of a dwelling-house or building in which any person has been suffering from any dangerous disease— [Cf. Punjab Act III of 1911, s. 144.]

(a) unless such house, building or part thereof and all articles therein liable to retain infection have been disinfected and the Commissioners have granted a certificate to that effect, and

(b) until a date specified in such certificate as that on which the house, building or part may be occupied and the articles therein used without causing risk of infection or contagion.

For the purposes of this section a hotel or lodging house-keeper shall be deemed to let part of his hotel or lodging-house to any person accommodated therein.

(Chapter XIV.—Restraint of infection.—Clauses 366—370.)

Provision of places and appliances for disinfection.

366. (*1*) The Commissioners at a meeting may provide proper places, with all necessary attendants and apparatus, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection or contagion ;

[*Cf.* Punjab Act III of 1911, s. 115.]

(*2*) The Commissioners may—

(*a*) cause conveyances, clothing or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by them ; and

(*b*) direct any clothing, bedding or other articles likely to retain infection to be disinfected or destroyed, and shall give compensation for any article destroyed under this clause.

Provision of places for disinfection or washing of infected articles.

367. The Commissioners at a meeting may from time to time, by public notice, appoint a place or places at which conveyances, clothing, bedding or other articles, which have been exposed to infection or contagion from any dangerous disease, may be washed, and no person shall wash or cause to be washed any such article at any place not so appointed, unless the same has been disinfected to the satisfaction of the Health Officer or Sanitary Inspector or of a registered medical practitioner.

[*Cf.* C. M. Act, s. 442 (2).]

Acts done by persons suffering from certain diseases.

368. No person suffering from any dangerous disease notified in this behalf shall—

[*Cf.* Punjab Act III of 1919, s. 145.]

(*a*) make or offer for sale any article of food for human consumption or any medicine or drug ; or

(*b*) wilfully touch any such article, medicine or drug, when exposed for sale by others ; or

(*c*) take any part in the business of washing or carrying soiled clothes.

Infected articles not to be transmitted without previous disinfection.

369. (*1*) No person shall, without previous disinfection of the same, give, lend, sell, transmit or otherwise dispose of any article which he knows or has reason to know has been exposed to infection from any dangerous disease.

[*Cf.* C. M. Act, s. 443.]

(*2*) Nothing in sub-section (*1*) shall apply to a person who transmits, with proper precautions, any such article for the purpose of having the same disinfected.

Exposure of person suffering from dangerous disease and restrictions on carriage of patient or dead-body in public conveyance.

370. (*1*) No person shall—

[*Cf.* P. H. Act, Scotland, s. 56 ; C. M Act, s. 441.]

(*a*) while suffering from any dangerous disease wilfully expose himself in any street, public place, shop, bazar or any place used in common by persons other than members of the family or household to which such infected person belongs, or cause or suffer himself or any clothing, bedding or other article which has been exposed to infection or contagion to be carried in a public conveyance without previously notifying to the owner, driver or person in charge of such conveyance that he is so suffering, or that such article is so infected, and without proper precautions against spreading the said disease, or

(*Chapter XIV.—Restraint of infection.—Clauses 371-373.*)

(*b*) so carry or permit to be carried in a public conveyance the dead body of any person who has died from a dangerous disease or any clothing, bedding, or other article which has been exposed to infection or contagion or while in charge of any person suffering from any dangerous disease expose such sufferer in any such place as is referred to in clause (*a*) or carry such sufferer or permit him to be carried in a public conveyance without giving previous notice and taking the precautions referred to in that clause.

(*2*) Notwithstanding anything contained in any enactment relating to public conveyances for the time being in force, no owner or driver or person in charge of a public conveyance shall be bound to carry any person suffering as aforesaid or to carry any such dead-body or any such infected clothing, bedding or other article as aforesaid, in such conveyance, unless payment or tender of sufficient compensation for the loss and expenses which he must incur in disinfecting such conveyance is first of all made to him.

Disinfection of public conveyance after carriage of patient or dead-body.

371. (*1*) The owner, driver or person in charge of any public conveyance in which any person suffering from any dangerous disease or the dead-body of any person who has died from such disease or any clothing, bedding or other article which has been exposed to infection or contagion has been carried shall immediately take the conveyance for disinfection to a place, if any, appointed under section 366 or section 367. [*Cf* C. M. Act, s. 445.]

(*2*) The person in charge of such place shall forthwith intimate to the Commissioners the number of the conveyance and proceed to disinfect the conveyance.

(*3*) If no place has been appointed under section 366 or section 367, the Commissioners shall take such steps as they may think proper for disinfecting such conveyance.

(*4*) No such conveyance shall be used until the Commissioners have granted a certificate stating that it may be used without causing risk of infection or contagion.

Power to provide special conveyances for patients, dead-bodies and infected articles.

372. (*1*) The Commissioners at a meeting may provide and maintain suitable conveyances for the free carriage of persons suffering from any dangerous disease or of the dead-bodies of persons who have died from any such disease or for the removal of any clothing, bedding, or other article which has been exposed to infection or contagion. [*Cf* C. M. Act, s. 446.]

(*2*) When such conveyances have been provided, it shall not be lawful, without the sanction of the Commissioners, to carry any such person or dead-body or any such clothing, bedding or other article in, or for any such person to cause himself to be carried in, or for any person to cause any such dead-body or any such clothing, bedding or other article to be carried in, any other public conveyance.

Power of entry for purpose of preventing spread of diseases.

373. The Commissioners may authorize any officer to enter, at any time between sunrise and sunset after three hours' notice into any building or premises in which any dangerous disease is suspected to exist, for the purposes of inspecting such building or premises. [*Cf* Punjab Act III of 1911, s. 211, U. P. Act II of 1916, s. 277.]

(Chapter XIV.—Restraint of infection.—Clauses 371—376.)

Power to close market.

374. *(1)* The Commissioners may, for a specified time, with a view to preventing the spread of any dangerous disease, order that any market within the municipality shall be closed, or forbid any persons to attend any such market.

(2) Such order shall be publicly notified in such manner and at such places as the Commissioners shall direct, and notice thereof shall be served on the owner, occupier or farmer of the market.

(3) After complying with the notice, the owner, occupier or farmer of the market or any person interested may appeal to the Magistrate, or where the Magistrate is the Chairman of the municipality, to the Commissioner of the Division, if he considers the notice to be unreasonable, and the order of the Magistrate or of the Commissioner of the Division, as the case may be, shall be final.

Power to close school.

375. *(1)* The Commissioners may, by notice, require the proprietor or person in charge of any school situated within the municipality for a specified time, with a view to preventing the spread of any dangerous disease or any danger to health likely to arise from the condition of the school, either to close the school or to exclude any scholars from attendance; and the proprietor or person in charge, as the case may be, shall forthwith comply with the notice. [*Cf.* Scotch Education Code, s. 30.]

(2) After complying with the notice, the proprietor or person in charge may appeal to the Magistrate or where the Magistrate is the Chairman of the municipality, to the Commissioner of the Division, if he considers the notice to be unreasonable, and the order of the Magistrate or the Commissioner of the Division, as the case may be, shall be final.

By-laws for control, etc., of dangerous disease.

376. The Commissioners at a meeting may make by-laws for the control, restraint and prevention of any dangerous disease and in particular, and without prejudice to the generality of the foregoing power, they may, and when required by the Local Government shall, make by-laws regarding the following matters :— [*Cf.* P. H. Ordinance [Trinidad], 1915, s. 101, & South African P. H. Act, 1919.]

(*a*) the restraint, segregation, and isolation of persons suffering from any dangerous disease or likely to suffer from any such disease owing to exposure to infection or contagion;

(*b*) the removal, disinfection and destruction of personal effects, goods, houses and other property exposed to infection or contagion;

(*c*) the removal to hospital and the treatment of persons suffering from any dangerous disease or likely to suffer from any such disease owing to exposure to infection or contagion;

(*d*) the speedy burial or cremation of the bodies of persons, who have died from any dangerous disease;

(*e*) house to house visiting and inspection;

(*f*) the promotion of cleanliness, ventilation and disinfection;

(Chapter XIV.—Restraint of infection.—Clause 377.)

(*g*) the duties in respect of the prevention and notification of any dangerous disease, and in respect of persons suffering or suspected to be suffering therefrom, of the owners and occupiers of tea-gardens, factories, mills, and workshops and of other persons employing in any one place not less than fifty persons;

(*h*) the duties of parents or guardians whose children being school children are suffering or have recently suffered from any dangerous disease or have been exposed to infection or contagion and the duties of persons in charge of schools in respect of such children;

(*i*) the prevention of the spread from any animal, or the carcasses or product of any animal, to man, of rabies, glanders, anthrax, plague, tuberculosis, trichinosis or any other disease communicable to man by any animal or the carcass or product of any animal;

(*j*) the prevention of the spread and the eradication of malaria, the destruction of mosquitoes and the removal or abatement of conditions permitting or favouring the multiplication or prevalence of mosquitoes;

(*k*) the prevention of the spread of disease by flies or other insects and the destruction of such insects, and the removal or abatement of conditions permitting or favouring, the prevalence or multiplication of such insects;

(*l*) the destruction of rodents and other vermin and the removal or abatement of conditions permitting or favouring the harbourage or multiplication thereof;

(*m*) the prevention of the spread of any dangerous disease by the carrying on of any business, trade or occupation;

(*n*) the regulation of rag-flock manufacture and the trade in rags and in bones and in second-hand clothing, bedding or any similar article and the requiring any such article to be disinfected before its importation, removal, sale or exposure for sale, or use in any manufacturing process; and

(*o*) the disposal of any refuse, waste matter or other matter or thing, which has been contaminated with or exposed to infection or contagion.

Vaccination.

Health Officer to exercise powers of Superintendent of Vaccination.

377. A Health Officer appointed under section 62 or section 63 shall, within the municipality to which he is appointed, subject to such restrictions as the Local Government may impose, exercise the powers and perform the duties of a Superintendent of Vaccination.

[*Cf.* B. and O. Act VII of 1922, s. 268.]

CHAPTER XV.

HOSPITALS, DISPENSARIES, CHILD WELFARE AND SCHOOL HYGIENE.

Power to Commissioners to provide hospitals, dispensaries, etc., for the reception of the sick.

378. (*1*) The Commissioners at a meeting may provide for the use of the inhabitants of the municipality hospitals, dispensaries or temporary places for the reception of the sick, and for that purpose may— [*Cf.* P. H Act, 1875, s. 131.]

(*a*) themselves build, alter, add to and maintain such hospitals, dispensaries or places of reception; or

(*b*) contract for the use of any such dispensary, hospital or place of reception, or of any part thereof; or

(*c*) enter into an agreement with any person having the management of any hospital, within or without the Municipality for the reception of the sick inhabitants of the municipality on payment of such annual or other sum as may be agreed on.

(*2*) The Commissioners of two or more municipalities may combine in providing, maintaining or improving a common dispensary, hospital or place for the reception of the sick, provided that the scheme of management and the apportionment of the costs shall be approved by the Commissioner of the Division.

Power of Commissioners to provide nurses, midwives, etc.

379. (*1*) The Commissioners at a meeting may provide— [*Cf.* P. H. Act Amendment Act, 1907, s. 67.]

(*a*) midwives for attendance in maternity cases; and

(*b*) health visitors to visit and inspect any premises in the municipality and, to give advice to expectant mothers on the management of their health and as to the proper nurture, care and management of young children, and the promotion of cleanliness. [*Cf.* L. G. C. (General powers) Act, 1908.]

(*2*) The Commissioners at a meeting may charge such reasonable fees for the services of midwives provided by them as they think fit and may prescribe rules for the qualifications, duties and salaries of such midwives and of health visitors.

Rules for child welfare.

380. The Local Government may make rules—

(*a*) requiring the father of a child if actually residing in the house where the child is born at the time of its birth, and any person in attendance upon the mother at the time of, or within twelve hours after, the birth, to give notice in writing of the birth to the Health Officer or Sanitary Inspector in such manner as the Commissioners may prescribe; [*Cf.* Notification of Births Act (England) 1907, s. 1(*1*).]

Chapter XV.—Hospitals, Dispensaries, Child Welfare and School Hygiene.—Clause 380.)

(*b*) requiring the certification and registration of all midwives, *dhais*, or other women who habitually or for gain attend women in child-birth, prescribing examinations and courses of training for any such persons or classes of persons, regulating the issue of certificates, deciding the conditions under which such persons may be suspended from practice and their certificates cancelled, and regulating, supervising and restricting within due limits the practice of such persons, particularly in regard to such matters as cleanliness, equipment, disinfection, and the submission of such reports and returns to the Health Officer, as may be prescribed; [*Cf.* Midwives Act (England) 1902, s 3.]

(*c*) regulating the appointment and powers of health visitors to advise persons as to infant-feeding, the proper nurture, care and management of young children and the promotion of cleanliness and regulating such other duties as may be assigned to health visitors; and

(*d*) providing for the sanitary inspection of all schools and colleges and for the medical inspection of children immediately before or at the time of, or as soon as possible after, their admission to a primary or secondary school and on such other occasions as the Local Government may direct, and authorizing the Commissioners to make such arrangements as the Local Government may approve, for attending to the health and physical condition of the children educated in such schools.

CHAPTER XVI.

EXTINCTION AND PREVENTION OF FIRE.

Power of fire brigade and other persons for suppression of fires

381. For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire brigade and to provide any implements, machinery or means of communicating intelligence which the Commissioners may think necessary for the efficient discharge of their duties by the brigade. [Cf. Ben. Act III of 1884, s. 349A.]

Power to direct operations in case of fire.

382. (*1*) On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, the Secretary to the Commissioners, any member of a fire brigade maintained by the Commissioners, then and there directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any police officer above the rank of constable may— [Cf. Ben. Act III of 1884, s 349B.]

(*a*) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property;

(*b*) close any street or passage in or near which any fire is burning;

(*c*) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any hose or other appliance, any premises;

(*d*) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred;

(*e*) call on the persons in charge of any fire engine to render such assistance as may be possible; and

(*f*) generally take such measures as may appear necessary for the preservation of life or property.

(*2*) No person shall be liable to pay damages for any act done by him under sub-section (*1*) of this section in good faith.

Power to search for inflammable material in excess of authorized quantity.

383. (*1*) The Commissioners may, without notice and at any period of the day or night, enter into and inspect a place which is suspected to contain kerosene, petroleum, or other inflammable material referred to in clauses (*xii*) and (*xiii*) of section 354 in excess of the quantity permitted to be kept in such house or building under the conditions of a license granted under section 354. [Cf. U. P. Act II of 1916, s. 258.]

(*2*) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a Magistrate may pass with respect to it.

(*3*) If the Magistrate decides that the material seized was stored in the place contrary to the conditions of such license, he may pass an order confiscating the same.

(*Chapter XVI.—Extinction and prevention of fire.— Clauses 384, 385.*)

(*4*) Subject to any provision of, or made under, this or any other enactment, the material so confiscated may be sold by order of the Magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the Municipal Fund.

(*5*) No order of confiscation under this section shall operate to prevent any criminal or other proceedings to which the person storing the material in excessive quantity may be liable.

Stacking, etc., of inflammable materials.

384. The Commissioners at a meeting may, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting hay, straw, wood, thatching grass, jute or other dangerously inflammable materials, or from placing mats on thatched huts or lighting fires in a place or within limits specified in the notice. [*Cf.* U. P. Act II of 1916, s. 259.]

Power to make by-laws.

385. The Commissioners at a meeting may make by-laws— [*Cf.* B. and O. Act VII of 1922, s. 274.]

(*a*) providing for the guidance, discipline and conduct of the members of a municipal fire brigade and any volunteer fire brigade recognized by the Commissioners; [*Cf.* Burma Act III of 1898, s. 138 (2).]

(*b*) prescribing the officer to whom and the place at which the outbreak of a fire shall be reported; [*Cf.* U. P. Act II of 1916, s. 298C (*a*).]

(*c*) regulating, either by rendering licenses necessary, or otherwise, the letting off of fire-arms, fire-works, fire-balloons, bombs or other explosives; and [*Cf.* Ben Act III of 1884, s 35C (*aa*).]

(*d*) generally making provision for the procedure and precautions to be adopted by the public on the occasion of a fire and for any other thing relating to fires in respect of which provision is necessary. [*Cf.* U. P. Act II of 1916, s. 298C (*b*).]

CHAPTER XVII.

MARKETS AND SLAUGHTER-PLACES.

Power to provide and maintain municipal markets, slaughter-houses and stock-yards.

386. (*1*) The Commissioners at a meeting may— [*Cf.* C. M. Act, s. 392; Ben. Act III of 1884, s. 386.]

(*a*) construct, purchase or take on lease any land or building for the purpose of establishing a new municipal market or a new municipal slaughter-house or municipal stock-yard, or of extending or improving any existing municipal market, municipal slaughter-house or municipal stockyard, and

(*b*) from time to time build and maintain such municipal markets, municipal slaughter-houses and municipal stock-yards and such stalls, shops, sheds, pens and other buildings or conveniences for the use of persons carrying on trade or business in, or frequenting, such markets, slaughter-houses or stock-yards, and charge rent, tolls and fees for the rights to expose goods for sale in such markets and for the use of shops, stalls and standings therein.

(*2*) The Commissioners at a meeting may place the collection of such rents, tolls and fees under the management of such persons as may appear to them proper or may farm out such rents, tolls and fees on such terms and subject to such conditions as they may think fit.

(*3*) The Commissioners may by general or special order—

(*i*) cancel or annul any right to expose goods for sale in such markets, and

(*ii*) refuse the use of any shop, stall or standing thereon without compensation for such cancellation or refusal if the person, who has been granted that right or use or any of his servants—

(*a*) closes his shop, stall or standing to the public, or

(*b*) fails to supply to the public the articles ordinarily kept for sale thereon

at such times as may from time to time be fixed by the Commissioners.

(*4*) Municipal slaughter-houses may be situated within or, with the sanction of the District Magistrate, without the limits of the municipality.

Power to close municipal markets, slaughter-houses and stock-yards.

387. The Commissioners at a meeting may, at any time, close any municipal market, municipal slaughter-house or municipal stock-yard or any portion thereof, and the premises occupied for any market, slaughter-house or stock-yard or portion so closed may be disposed of as the property of the Commissioners. [*Cf.* C. M. Act, s. 393.]

MARKETS.

Prohibition of use of municipal market without permission.

388. (*1*) No person shall, without the permission of the Commissioners, or, if the Commissioners have farmed out the rents and fees, without the permission of the farmer, sell or expose for sale any living thing or any article within a municipal market. [*Cf.* Madras Act V of 1920, s. 261.]

(*Chapter XVII.—Markets and slaughter-places.—Clauses 389, 390.*)

(*2*) If any person contravenes the provisions of sub-section (*1*) he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such market by the Commissioners, or by the farmer, as the case may be, or by any of the officers or servants of the Commissioners or of the farmer.

Power to Commissioners to permit opening of new private markets.

389. (*1*) In any municipality of which the Commissioners at a meeting have published an order in this behalf, no person shall— [*Cf.* C. M. Act, s. 395 (2); Ben. Act III of 1884, s. 295.]

(*i*) establish a new private market for the sale of, or for the purpose of exposing for sale any living thing intended for human food, or any other article of human food, except with the sanction of the Commissioners at a meeting;

(*ii*) without or otherwise than in conformity with the terms of a license granted by the Commissioners at a meeting in this behalf, keep open any private market or wilfully or negligently permit any place to be used as a private market: [*Cf.* C. M. Act, s. 396.]

Provided that the Commissioners shall not— [*Cf.* Ben. Act III of 1884, s. 340.]

(*a*) refuse a license for the maintenance of a market lawfully established at the date of the publication of such order of the Commissioners at a meeting, if application be made within six months from such date, except on the ground that the place where the market is established fails to comply with any conditions prescribed by, or under, this Act, or

(*b*) cancel, suspend or refuse to renew any license granted under such order or bylaws framed in this behalf for any cause, other than the failure of the licensee to comply with the conditions of the license or with any provision of, or made under, this Act.

(*2*) The Commissioners at a meeting may by general or special order cancel any license granted under this section if the private market is closed to the public or if a supply of the articles, for the sale of which the license was granted, is not kept available for sale to the public at such times as may from time to time be fixed by the Commissioners.

Power to close unlicensed places.

390. The Magistrate, on the application of the Commissioners at a meeting, may order any place which has been used as a market without a license under section 389 to be closed as a market-place, and thereupon may take order to prevent such place being used as a market, and no person shall thereafter sell or expose for sale on or in such place any living thing intended for human food or any article of food. [*Cf.* Ben. Act III of 1884, s. 345.]

(Chapter XVII.—Markets and slaughter-places.— Clauses 391-394.)

Licensing of private slaughter-houses.

391. (*1*) Notwithstanding anything contained in section 386, the Commissioners at a meeting may grant and withdraw licenses subject to such conditions and the payment of such fees, as they may think proper, for the use of any premises either within or, with the sanction of the District Magistrate, without the limits of the municipality, for the slaughter of animals or animals of any specified description, for the sale of their flesh for human consumption. [Cf. U. P. Act II of 1916, s. 287; Ben. Act VII of 1865, s. 2.]

(*2*) When such premises have been fixed by the Commissioners beyond municipal limits, the Commissioners shall have the same power to make by-laws for the inspection and proper regulation of the same as if they were within those limits.

Prohibition of slaughter of animals except at licensed or municipal slaughter-house.

392. No person shall slaughter any animal for the sale of its flesh for human consumption at any place within the municipality other than a municipal slaughter-house or a slaughter-house licensed under section 391.

Power to require paving and draining of private markets, etc., and to alter structures in such markets.

393. (*1*) The Commissioners at a meeting may, by written notice, require the owner or occupier of any private market, or private slaughter-house— [Cf. C. M. Act, s. 399; Ben. Act III of 1884, ss. 249, 268; Ben. Act VII of 1865, s. 8.]

(*a*) to cause the whole or any portion of the floor of the market-building, market-place, or slaughter-house to be raised or paved with dressed stone or other suitable material,

(*b*) to cause such drains to be made in or from the market-building, market-place, or slaughter-house, of such material, size and description, at such level, and with such outfall as to the Commissioners may appear necessary, and

(*c*) to cause a supply of water to be provided for keeping such market, market-place, or slaughter-house in a clean and wholesome state, and

(*d*) to cause any shop, stall, shed or other structure in any private market to be altered or improved in such manner as the Commissioners at a meeting may consider necessary.

Power to define limits of market and to require provision and maintenance of market approaches, etc.

394. (*1*) The Commissioners at a meeting may— [Cf. C. M. Act, s. 400]

(*a*) define or determine the limits of any private market or declare what portions of such market shall be made part of the existing approaches, streets, passages and ways to and in such market, and

(*b*) after hearing the owner or occupier of such market by written notice, require such owner or occupier to—

(*i*) lay out, construct, alter, clear, widen, pave, drain and light, to the satisfaction of the Commissioners, such approaches, streets, passages and ways to or in such market, and

*(Chapter XVII.—Markets and slaughter-places.—Clause 395.)

(ii) provide such conveniences for the use of persons resorting to such market and

(iii) provide adequate ventilation and lighting of the market building or any portion thereof, including shops and stalls,

as the Commissioners may think fit.

(2) The Commissioners at a meeting after hearing the owner or occupier of any private market may, by written notice, require such owner or occupier to maintain in proper order the approaches, streets, passages and ways to and in such market, and such other conveniences as are provided for the use of persons resorting thereto.

(3) The Commissioners shall cause a notice of the limits of any market, defined under sub-section (1), to be affixed in the English, Bengali, Hindi and Urdu languages as they may think necessary on some conspicuous spot on or near the building or place where such market is held.

Power to expel person contravening by laws.

395. (1) The Commissioners after giving the parties concerned an opportunity of being heard may— [Cf. C. M. Act, s. 403.]

(a) expel from any municipal market or municipal slaughter-house for such period as they may think fit any person who or whose servant has been convicted of contravening any by-law made under section 398 at the time in force in such market or slaughter-house,

(b) prevent such person, by himself or his servants, from further carrying on any trade or business in such market or slaughter-house, or occupying any stall, shop, standing, shed, pen or other place therein, and

(c) determine any lease or tenure which such person may have in any such stall, shop, standing, shed, pen or place.

(2) If the tenant, or the agent of the tenant of the owner or lessee of any private market or slaughter-house licensed under section 389 or section 391, as the case may be, has been convicted for contravention of any by-law made under section 398 and specified by the Commissioners at a meeting in this behalf, the Commissioners at a meeting may require such tenant or agent to remove himself from any such market or slaughter-house, within such time as may be mentioned in the requisition, and if he fails to comply with such requisition, he may, in addititíon to any penalty which may be imposed on him under this Act, be summarily removed from such premises by the owner or lessee thereof or by the servants of such owner or lessee.

(3) If it appears to the Commissioners at a meeting that in any such case the owner or lessee is acting in collusion with a tenant or agent convicted as aforesaid who fails to comply with a requisition issued under sub-section (2) the Commissioners at a meeting may, if they think fit, cancel the license of such owner or lessee in respect of such premises.

(*Chapter XVII.—Markets and slaughter-places.—Clauses 396-398.*)

Duration and registration of license.

396. (*1*) Every license granted under this chapter shall be in force until the end of the year during which it is granted, and shall be registered in a book to be kept for the purpose, containing the following particulars— [*Cf.* Ben. Act III of 1884, ss. 839, & 841.]

(*a*) the name and address of the owner of the land, and the name and address of the owner of the market or slaughter-house, and of any lessee thereof;

(*b*) the extent and boundary of the market or slaughter-house;

(*c*) in the case of a market the description of the articles sold and the days on which it will be held.

Registration of transfers.

397. Every transfer of any interest in such market or slaughter-house shall be registered by the transferee at the municipal office within two months from the date of the transfer, and any market or slaughter-house the transfer of interest in which has not been registered in accordance with the provisions of this section shall be deemed to be land used as a market or slaughter-house, as the case may be, without a license. [*Cf.* Ben. Act III of 1884, ss. 842 & 843.]

By-laws for licensing, regulating and inspecting certain business.

398. The Commissioners at a meeting may make by-laws— [New.]

(*a*) for the lay-out, construction, regulation and inspection of markets and slaughter-houses, for the provision of a proper supply of water, the prevention of cruelty, the proper cleaning and general regulation and control of the sanitary condition of such places, the feeding and watering of animals kept in slaughter-houses or in yards attached to slaughter-houses, and the prevention of nuisances and obstruction;

(*b*) in the case of any market or slaughter-house which belongs to the Commissioners, for the orderly conduct of business, and for fixing the rents and other charges to be levied;

(*c*) prescribing the conditions on or subject to which, and the circumstances in which, and the areas, or localities in respect of which, licenses may be granted, refused, suspended or withdrawn for the use of any private market or slaughter-house; and

(*d*) in a municipality where a reasonable number of slaughter-houses have been provided or licensed by the Commissioners, controlling and regulating the admission within municipal limits, for purposes of sale of the flesh (other than cured or preserved meat) for human consumption of any cattle, sheep, goats or swine slaughtered at a slaughter-house or place not maintained or licensed under this Act.

CHAPTER XVIII.

WEIGHTS AND MEASURES.

Standard weights and measures in municipalities.

399. (*1*) Where the Commissioners of any municipality, to which this section has been extended by the Local Government, have made by-laws under section 401, prescribing the standard weights and measures to be used within the municipality, they may at a meeting by order published in the prescribed manner prohibit the use within the municipality of any maund, seer or tola weight or of any cubit measure other than such as conforms with the standard prescribed in the said by-laws.

(*2*) When such order has been published, any person, authorized by them in this behalf, may at all reasonable times enter into and inspect any market, building, shop, stall or place used for the sale of any goods, food or drug, and may inspect any instruments for weighing, and any weights or measures found therein and test the same with other weights and measures, and may seize any such instruments for weighing, and any such weight or measure which the person so authorized reasonably believes to be false or to contravene any by-laws made by the Commissioners under section 401, and may take the same to be examined or tested by the officer who shall be appointed by the Commissioners for the purpose.

(*3*) Every person for the time being in charge of or employed in such market, building, shop, stall or place shall, if so requested by the person making such inspection, produce for such inspection and comparison all instruments for weighing, and all weights and measures kept therein.

Forfeiture of false weights and measures.

400. If it appears to the officer appointed under sub-section (*2*) of section 399 that the instrument for weighing, or the weight or measure is false or contravenes any by-laws made by the Commissioners under section 401, he shall cause such instrument, weight or measure to be forfeited to the Commissioners in order that it may be destroyed or otherwise disposed of by the Commissioners.

Power to make by-laws.

401. The Commissioners at a meeting may make by-laws—

(*a*) prescribing the standard weights and measures to be used within the municipality, namely—

(*i*) Government standard weights, that is to say, a maund consisting of forty seers, a seer consisting of eighty tolas and a tola consisting of one hundred and eighty grains; or

(*ii*) a standard cubit consisting of eighteen inches for the measure of commodities other than land; or

(*iii*) both the weights and the measure of length mentioned in sub-clauses (*i*) and (*ii*), respectively;

*(Chapter XVIII.—Weights and Measures.—
Clause 401.)*

(*b*) providing standards of the weights and measures so prescribed ;

(*c*) arranging for the safe keeping of such standards ;

(*d*) fixing times and places for testing and verifying any weight or measure, which is of the same denomination as one of such standards ;

(*e*) for stamping, in such manner as to prevent fraud any weight or measure which is found to be correct ; and

(*f*) fixing fees in respect of such verification and stamping.

CHAPTER XIX.

FOOD AND DRUGS.

Sale of Food and Drugs.

Licensing of butchers and of sale of meat, etc., outside market.

402. (*1*) No person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioners in this behalf— [*Cf.* C. M. Act, s. 405.]

(*a*) carry on in the municipality, or at any municipal slaughter-house without the municipality, the trade or business of a butcher, or

(*b*) sell or expose for sale any animal, game, poultry, meat or fish intended for human consumption, in any place other than a municipal market or a private market.

(*2*) Nothing in clause (*b*) of sub-section (*1*) shall apply—

(*a*) to the sale of meat, game, poultry or fish in any hotel or eating-house for consumption on the premises, or

(*b*) to fresh fish sold from, or exposed for sale on, a vessel in which it has been brought direct to the municipality after being caught at sea or in a river or in private fisheries.

Municipal bakeries and sweetmeat shops.

403. The Commissioners in their discretion may provide and maintain municipal bakeries and sweetmeat shops, and may at any time lease to any person such bakeries and shops on such terms and conditions as may to them seem proper. [New.]

Licensing of dairymen, bakers, etc.

404. (*1*) In any municipality to which the provisions of this section have been extended by the Local Government, no person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioners in this behalf,— [*Cf.* C. M. Act, s. 428.]

(*a*) carry on in the municipality the trade or business of a dairyman, or of a baker, confectioner, ice or ærated-water manufacturer, or sweetmeat maker; or

(*b*) use any place in the municipality for the sale of milk, bread-stuffs, cake, pastry, confectionery, sweetmeats, ice or ærated-waters.

(*2*) Nothing in sub-section (*1*) shall apply to the sale of milk, bread-stuffs, cake, pastry, confectionery, sweetmeats, ice or ærated-waters in any hotel or eating-house for consumption on the premises.

(*3*) In extending the provisions of this section to any municipality the Local Government may exempt any of the trades or business mentioned in clause (*a*) of sub-section (*1*) from the operation of the section.

Prohibition of sale of diseased animals or unwholesome articles intended for human food.

405. (*1*) No person shall sell, store for sale, expose or hawk about for sale, or keep for sale, [*Cf.* C. M Act, s. 412; Ben. Act III of 1884, s 251.]

(*a*) any living thing intended to be used as food; or

(Chapter XIX.—Food and Drugs.—Clauses 406—410.)

(*b*) any other article of food or any drug intended to be used for human consumption,

which is diseased, unsound, unwholesome or unfit for human food, or, in the case of drugs, for medicine.

(*2*) In any prosecution under this section the Court shall, unless and until the contrary is proved, presume that any such living thing, article of food, or drug found in the possession of a person who is in the habit of keeping such living thing or keeping or manufacturing such other article of food or drug for the purpose of human consumption has been so kept or manufactured, as the case may be, for sale by such person.

Prohibition of the keeping of bread-stuffs, etc., otherwise than in covered receptacles.

406. No milk, bread-stuffs, cake, pastry, sweetmeats or confectionery shall be sold, exposed or kept or hawked about or stored for sale unless they be kept properly covered or otherwise guarded to the satisfaction of the Commissioners, so that they shall be protected from dust dirt and flies.

[*Cf* P. H. Ordinance (Fiji), 1911, s 97; and P. H Ordinance (Trinidad) No. 17 of 1915, s. 155 (c).]

Registry of shops for sale of drugs used in Western medical science.

407. No shop or place shall be kept for the retail sale of drugs recognized by the British Pharmacopœia, not being also articles of ordinary domestic consumption, unless the same has been registered in the office of the Commissioners. The Commissioners shall, upon registration, grant the keeper of such shop or place a license which he shall be bound to display in some conspicuous part of his premises.

[*Cf.* Ben Act III of 1884, s. 252; B. and O. Act VII of 1922, s. 282.]

Compounders' certificates.

408. (*1*) No person shall compound, mix, prepare, dispense or sell any drug in any shop or place registered under section 407, unless he holds the prescribed certificate that he is a fit person to be entrusted with such duties.

[*Cf.* Ben. Act III of 1884, s. 252, B. and O. Act VII of 1922, s 283.]

(*2*) Any owner, occupier or keeper of any such shop or place, who employs any such uncertified person to perform any one or more of such duties, shall be liable to a fine as provided in this Act, and shall be further liable, at the discretion of the Magistrate, to forfeit his license:

Provided that this section shall not come into operation until after the expiration of a period of six months from the publication of a notification to that effect by the Local Government.

Savings as to sale of drugs used by practitioners of indigenous medicines.

409. Nothing contained in section 407 or section 408, shall be construed to apply to the sale of drugs used by practitioners of indigenous medicines, whether recognized by the British Pharmacopœia or not, when such drugs are not sold in a shop or place where medicines recognized by such Pharmacopœia are dispensed upon prescription.

[*Cf.* Ben Act III of 1884, s. 252; B. and O. Act VII of 1922, s. 284.]

Inspection, seizure and destruction of food and drugs.

Power to inspect place where unlawful slaughter of animals or sale of flesh is suspected.

410. If the Commissioners, Health Officer, Sanitary Inspector, or any other officer authorized by the Commissioners in this behalf have or has reason to believe that any animal intended for human food is being slaughtered, or that the flesh of any such animal is being sold or exposed for sale, in any place or manner not duly authorized under this Act, the Commissioners, Health Officer, Sanitary Inspector or other

[*Cf.* C. M. Act, s. 417; Pun. Act IV of 1911, s. 208.]

(*Chapter XIX.—Food and Drugs.—Clauses 411, 412.*)

officer as aforesaid may obtain a warrant from a Magistrate at any time by day or by night, without notice, and inspect such place for the purpose of satisfying themselves or himself as to whether any provision of this Act or of any rule or by-law made under this Act, at the time in force, is being contravened thereat.

Power to inspect place where living things, etc., intended for human consumption, are exposed for sale.

411. (*1*) The Commissioners, Health Officer, Sanitary Inspector, or any other officer authorized by the Commissioners in this behalf may— [*Cf.* Ben. Act III of 1884, ss. 251B, 253.]

(*a*) at all reasonable times enter into and inspect any place in which any living thing intended for human food or any other article of food or any drug, is deposited for the purpose of sale or of preparation for sale, or to which such living thing, article of food, or drug intended for human consumption is brought for such purpose,

(*b*) inspect and examine any such living thing or other article of food or drug which may be found in any place referred to in clause (*a*), and

(*c*) inspect and examine any living thing intended for human food or any other article of food, or any drug intended for human consumption, which is being hawked about for sale.

(*2*) If, as a result of such inspection as is provided for in sub-section (*1*), a prosecution is instituted under this chapter, then the burden of proving that any such living thing, or other article of food or drug as aforesaid was not exposed or hawked about or deposited or brought for sale or for preparation for sale, or was not intended for human consumption shall rest with the party charged.

Power to seize living things, etc., intended for human consumption which are diseased, etc.

412. (*1*) If in the course of an inspection of a place made under section 411 any such living thing appears to the Commissioners or to the Health Officer, Sanitary Inspector or other officer duly authorized by the Commissioners in this behalf to be diseased, or if any article of food or drug appears to them or him to be unsound, unwholesome or unfit for human food or for medicine, as the case may be, or if any utensil or vessel used for preparing, or containing any such food or drug, which may be found in such place is of such kind or in such state as to render any food or drug prepared or contained therein unwholesome or unfit for human food or for medicine, as the case may be, [*Cf.* C. M. Act, s. 419, Ben. Act III of 1884, ss. 251B, 258.]

they or he may seize and carry away such living thing, article of food, drug, utensil or vessel as aforesaid in order that the same may be dealt with as hereinafter in this chapter provided.

Explanation.—(*1*) Meat subjected to the process of blowing shall be deemed to be unfit for human food.

(*2*) A vessel made of any corrosive metal or material notified in this behalf by the Local Government as dangerous to health, which is used for the preparation of liquid tea for sale shall be deemed to be of the kind referred to in sub-section (*1*).

(*2*) The Commissioners, Health Officer, Sanitary Inspector or such other officer authorized as aforesaid may, instead of carrying away any living thing, article of food, drug, utensil or vessel seized under sub-section (*1*), leave the same in such safe custody as

(*Chapter XVIII.—Food and Drugs.—Clauses 413—415.*)

they or he thinks fit in order that the same may be dealt with as hereinafter in this chapter provided ; and no person shall remove such living thing, article of food, drug, utensil or vessel from such custody or interfere or tamper with the same in any way while so detained.

Destruction of living things, etc., seized under section 412.

413. (*1*) When any living thing, article of food, drug, utensil or vessel referred to in section 412 is seized under that section, it may, with the written consent (witnessed by two other persons) of the owner or the person in whose possession it was found, be forthwith destroyed and the expenses thereby incurred shall be paid by the owner or person in whose possession such living thing, article of food, drug, utensil or vessel was at the time of such seizure. [*Cf.* C. M. Act, s. 420 ; Ben Act III of 1884, ss. 251C, and 253.]

(*2*) If such consent be not obtained, then, if any food or drug so seized is of a perishable nature, the officer seizing such food or drug may take it before a Magistrate and if it appears to the Magistrate that such food is unsound, unwholesome or unfit for human food, he shall condemn it and order it to be destroyed or so disposed of as to prevent it being sold or used for human food.

(*3*) A Magistrate shall not be bound to hear the owner of such food before passing an order under sub-section (*2*) and if in his discretion he deems it necessary to give a hearing to such owner, such hearing shall be merely for the purpose of determining whether such food is unsound, unwholesome or unfit for human food.

Sale of unwholesome food or drug

414. If any Magistrate is satisfied on the application of the Commissioners, Health Officer, Sanitary Inspector or any other officer authorized by the Commissioners in this behalf that there is just cause to believe that any diseased living thing intended for human food or any food or drug, which is unsound, unwholesome or unfit for human food or medicine is in the possession of any person for the purpose of being sold or offered or exposed for sale within the limits of a municipality, for such consumption, he may grant a warrant to enter upon the premises of such person, and to search for and seize such living thing, article of food or drug. [*Cf.* Ben. Act III of 1884, ss. 250, 253.]

Taking before Magistrate animals, etc., seized under section 412.

415. (*1*) Where any living thing, article of food, drug, utensil or vessel seized under section 412 is not destroyed by consent under sub-section (*1*) of section 413, or where an article of food so seized which is perishable is not dealt with under sub-section (*2*) of that section, it shall be taken before a Magistrate as soon as may be after such seizure. [*Cf.* C. M. Act, s. 421; Ben Act III of 1884, ss. 251C, 253.]

(*2*) If it appears to the Magistrate that any such living thing is diseased or unsound or that any such food or drug is unsound, unwholesome or unfit for human food or for medicine, as the case may be, or that any such utensil or vessel is of such kind or in such state as is mentioned in sub-section (*1*) of section 412, he shall cause the same to be destroyed at the expense of the person in whose possession it was at the time of its seizure, or to be otherwise disposed of by the Commissioners so as not to be capable of being used as human food or medicine.

(*3*) If it appears to the Magistrate that any such living thing is not diseased or that any such food or drug is not unsound, unwholesome or unfit for human food

(*Chapter XIX.—Food and Drugs.—Clauses 416, 417.*)

or for medicine, as the case may be, or that any such utensil or vessel is not used for preparing, manufacturing or containing food or drugs which are unsound, unwholesome or unfit for human food or for medicine, as the case may be, the person from whose shop or place it was taken shall be entitled to have it restored to him, and it shall be in the discretion of the Magistrate to award him such compensation, not exceeding the actual loss which he has sustained, as the Magistrate may think proper.

Vesting of condemned food or drug in Commissioners.

Food and drugs directed to be destroyed, etc., to be property of Commissioners.

416. When any authority directs, in exercise of any powers conferred by this chapter, the destruction of any living thing, food or any drug, or the disposal of the same so as to prevent its being used as food or medicine, the same shall thereupon be deemed to be the property of the Commissioners. [*Cf.* O. M. Act, s 126.]

Purity of Milk-supply.

Regulation of dairies and milk-supply

417. The Commissioners at a meeting may, and when required by the Local Government shall, make by-laws regarding all or any of the following matters:— [*Cf.* P. H. Ordinance (Fiji), 1911, s. 76; and South African P. H. Act, 1919, ch. VII.]

(*a*) the registration of all dairymen and dairies within the municipality;

(*b*) the inspection by the Commissioners or persons authorized by them of dairies, dairy cattle and persons in or about dairies who have access to the milk or any milk-receptacle;

(*c*) the duties of dairymen in connection with the occurrence of infectious or contagious disease amongst persons residing or employed in or about their premises, and the furnishing by them of the names and addresses of their customers and sources of supply, and their duties in connection with reporting the occurrence in any dairy cattle of diseases which are communicable to man and of any disease of the udder;

(*d*) the conveyance and distribution of milk, and the labelling or marking of receptacles used for the conveyance of milk;

(*e*) the ventilation, including air-space, lighting, cleansing, drainage and water-supply of dairies;

(*f*) the health and good condition of the milch-cattle in dairies;

(*g*) the cleanliness of dairies, milk-receptacles, dairy cattle and all persons employed in or about dairies;

(*h*) the protection of milk against infection or contamination;

(*i*) the prevention of the sale of infected, contaminated, or dirty milk, the prohibition of the sale and the disposal of any milk suspected of being infected, contaminated or dirty, and the closing of any dairy where such milk is kept for sale or the exclusion therefrom of any animal, the milk from which there is reason to believe has conveyed or is likely to convey any infectious disease; and

(*j*) any other measures and precautions which in the opinion of the Local Government may be necessary to secure and maintain the purity of the milk-supply.

CHAPTER XX.

PLACES FOR DISPOSAL OF THE DEAD AND REGISTRATION OF BIRTHS AND DEATHS.

Registration of existing burial or burning-grounds.

418. Within three months from the date of the publication of a notification by the Local Government extending this section to any municipality every place therein which is used as a burial or burning-ground for corpses shall be registered as such by the owner thereof in the office of the Commissioners but no fee shall be charged for such registration. [*Cf.* Ben. Act III of 1884, s. 254.]

Permission to make or resume burial and burning-grounds and registration of same.

419. The Commissioners at a meeting may in their discretion at any time grant permission for the formation and making of burial or burning-grounds, or for the renewed use of such grounds as, owing to disuse, have not been registered under section 418 and when such permission has been granted shall cause such grounds to be registered. [*Cf.* Ben. Act III of 1884, s. 255.]

Provision of places to be used as burial or burning-grounds.

420. The Commissioners at a meeting may, from time to time, out of the Municipal Fund, with the sanction of the Commissioner of the Division, provide fitting places either within or without the limits of the municipality to be used as burial or burning-grounds, and may impose such fee, as may be fixed in this behalf by the Commissioners at a meeting with the approval of the Local Government, in respect of every corpse buried or burnt within such burial or burning-grounds. [*Cf.* Ben. Act III of 1884, s. 259.]

Prohibition to bury or burn in unregistered ground.

421. (*1*) After the expiration of the three months mentioned in section 418, no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning-ground or has been provided by the Commissioners for the purpose; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere. [*Cf.* Ben. Act III of 1884, s. 257.]

(*2*) Except with the special permission of the Commissioners no body shall be exhumed from any burial-ground except under the provisions of section 176 of the Code of Criminal Procedure, 1898, or of any other relevant enactment for the time being in force. [*Cf.* C. M. Act, s. 402 (*1*) (*d*).] V of 1898.

Power to order certain burial and burning-grounds to be closed.

422. (*1*) The Commissioners at a meeting may, by public notice, order any burial or burning-ground, whether registered under section 418 or provided under section 420, which in their opinion is dangerous or likely to be dangerous to the health of persons living in the neighbourhood, or to be offensive to such persons, to be closed from a date specified in the notice, and shall, in such case, if no suitable place for burial or burning exists at a reasonable distance, provide a fitting place for the purpose. [*Cf.* Ben. Act III of 1884, s. 256; U. P. Act II of 1916, s. 285.]

(*2*) When a notice is issued ordering the closing of any burial-ground under sub-section (*1*), private burial-places in such burial-grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf: [*Cf.* Ben. Act III of 1884, s. 256A.]

(Chapter XX.—Places for disposal of the dead and registration of births and deaths.—Clauses 423—426.)

Provided that the limits of such burial-places are defined, and that they shall only be used for the burial of members of the family of the owners thereof.

(*3*) If the Commissioners at a meeting are, at any time, of opinion that any place formerly used as a burial or burning-ground which has been closed under this section or under any other enactment or authority has, by lapse of time, become no longer dangerous to health and may, without risk of danger, be again used for the said purpose, they may direct that it be reopened for such purpose and their order shall be noted in the register kept under section 418. [*Cf.* C. M. Act, s. 461.]

Appeals from orders under section 422.

423. Any person aggrieved by any order made by the Commissioners under the powers conferred upon them by section 422 may appeal to the Local Government, whose decision shall be final. [*Cf.* Ben. Act III of 1884, s. 256B.]

Power to cause corpses to be burnt or buried according to the religious tenets of the deceased.

424. (*1*) After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried, and the expenses thereby incurred shall be recoverable as a debt due from the estate of such persons. In every such case the corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenets of the deceased. [*Cf.* Ben. Act III of 1884, s. 258.]

(*2*) If a person dies in a hospital or temporary place of reception for the sick from any infectious disease, and the Health Officer or any registered medical practitioner certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place, except for the purpose of being forthwith buried or cremated, no person shall remove the body except for that purpose; and the body when taken out of such hospital or place for that purpose shall be forthwith taken direct to the place of burial or cremation and there disposed of. [*Cf.* Infectious Disease (Prevention) (England) Act, 1890, s. 9.]

Power to provide for burial of paupers free of charge.

425. The Commissioners at a meeting may, from time to time, out of the Municipal Fund, provide for the burial and burning of the dead bodies of paupers, free of charge, within the limits of the municipality. [*Cf.* Ben. Act III of 1884, s. 260.]

Power to license fuel shops at burning-grounds.

426. (*1*) The Commissioners may, from time to time, grant licenses to persons applying for the same, for the sale at burning-grounds of fuel and other articles used for the cremation of dead bodies, and in case any such license is granted shall, from time to time at a meeting, prescribe a scale of rates for the sale of such articles; and no person not so licensed shall, within three hundred yards of any such burning-ground, sell or offer for sale any such fuel or other article. [*Cf.* Ben. Act III of 1884, s. 260A.]

(*2*) The Commissioners may, on good and sufficient cause, revoke or withdraw any such license as they may think fit, and any person to whom such license is granted, who charges for the sale of any such articles at any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled and shall be liable also to fine as provided in this Act.

(*Chapter XX.—Places for disposal of the dead and registration of births and deaths.—Clauses 427-430.*)

Registration of births and deaths.

427. The Commissioners, when required by the Local Government to do so, shall provide at a meeting for the registration of births and deaths within the limits of the municipality in accordance with the provisions of the Bengal Births and Deaths Registration Act, 1873, or any other similar Act for the time being in force.

[*Cf.* Ben. Act III of 1884, s. 316.]

Ben. Act IV of 1873.

Appointment of Registrar and of Sub-Registrars at burning-*ghats* and burial-grounds.

428. (*1*) This section shall be construed as being in addition to and not in derogation of the provisions of the Bengal Births and Deaths Registration Act, 1873.

Ben. Act IV of 1873.

(*2*) The Commissioners shall appoint at a meeting a person to be Registrar of Births and Deaths for the whole municipality and may also appoint and maintain at any burning-*ghat* or burial-ground a Sub-Registrar for the registration of all corpses brought to such burning-*ghat* or burial-ground for cremation or interment.

[*Cf.* Ben. Act III of 1884, s. 347.]

(*3*) A Registrar and a Sub-Registrar appointed under sub-section (*2*) shall be of such class or possess such qualifications as may be prescribed, and shall be paid out of the Municipal Fund such salary and leave allowance as the Local Government may by general or special order prescribe.

(*4*) Notwithstanding anything contained in sections 516 and 517, a Registrar appointed under sub-section (*2*) may at any time without reference to the Commissioners institute a prosecution for an offence committed within the municipality under the Bengal Births and Deaths Registration Act, 1873, or under section 430, or under any rule made under this Act to enforce the registration of births and deaths.

(*5*) A Registrar or Sub-Registrar appointed under this section shall not be removed from office or otherwise punished by the Commissioners except with the approval of the Commissioner of the Division.

Information required by Bengal Act IV of 1873 to be given to such Sub-Registrar.

429. Whenever a Sub-Registrar has been appointed for any burning-*ghat* or burial-ground under section 428, information of the particulars required by section 8 of the Bengal Births and Deaths Registration Act, 1873, to be known and registered may be given in respect of the death of any person whose body is brought to such burning-*ghat* or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall be deemed to be information given to the Registrar of the district as required by the said section.

[*Cf.* Ben. Act III of 1884, s. 348.]

Ben. Act IV of 1873.

Section 9 of the said Act shall be applicable to all Sub-Registrars appointed under this Act.

Information of deaths in hospital.

430. Whenever a death occurs in any hospital within the limits of any municipality in respect of which the Local Government has directed that all deaths shall be registered under the Bengal Births and Deaths Registration Act, 1873, it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe, and in such case no other person shall be required to give information of such death to a Registrar under the said Act or to a Sub-Registrar under this Act.

[*Cf.* Ben. Act III of 1884, s. 349.]

(Chapter XX.—Places for disposal of the dead and registration of births and deaths.—Clause 431.)

Power to make rules.

431. The Local Government may make rules— [Cf. Ben. Act III of 1884, s. 350(d).]

(*i*) requiring the father or mother of every child born in any municipality or the occupier of the building in which such child is born or the medical practitioner or midwife in attendance at the time of birth within such specified period as may be fixed to give information of such birth to the Health Officer or Sanitary Inspector or other officer appointed for the purpose, and to furnish such particulars as may be prescribed by the Local Government in this behalf;

(*ii*) requiring the nearest relative present at the death of, or in attendance during the last illness of, any person dying in any municipality or the medical practitioner, if any, who attended such person in his last illness or every other person present at the death or, in their default, the occupier of the building in which the death occurred or some other person living in the building to report within a specified period such death to the Health Officer, Sanitary Inspector, Sub-Registrar appointed under section 428 or other officer appointed for the purpose, giving such particulars as the Local Government may prescribe;

(*iii*) controlling and regulating the use and management of burial and burning-grounds and the disposal of corpses;

(*iv*) generally for securing the better registration of births and deaths.

CHAPTER XXI.

NUISANCE.

Nuisance.

432. (*1*) The powers conferred by this chapter shall be deemed to be in addition to and not in derogation of any powers conferred by the other provisions of this Act. [Cf. Ben. Act III of 1884, s 210A.]

(*2*) (*a*) The condition of—

(*i*) any premises or part thereof of such a construction or in such a state or so situated or so dirty as to be a cause of annoyance to the inmates thereof, the neighbours or the public, or injurious or dangerous to health or unsafe, including places infested by, or providing haunts for mosquitoes or mosquito larvæ, flies or fly maggots, hookworm larvæ or ova, or rats or other noxious animals or insects, and thereby liable to favour the spread of infectious disease;

(*ii*) any street, tank, pool, ditch, gutter, water-course, sink, cistern, water-closet, earth-closet, privy, urinal, cess-pool, drain, dung-pit or ash-pit so foul or in such a state or so situated as to be a cause of annoyance to the inmates of the premises, the neighbours or the public, as the case may be, or injurious or dangerous to health;

(*iii*) any premises which by reason of abandonment or disputed ownership or for any other reason remain untenanted and thereby become a resort of idle and disorderly persons, or

(*iv*) any school, factory, workshop or other trade premises so unclean as to be a cause of annoyance to the inmates, the neighbours or the public, or injurious to health, or not so ventilated as to render harmless, as far as practicable, all gases, vapours, dust or other impurities, generated in the course of the work carried on therein, that are a cause of annoyance to the inmates, the neighbours or the public or injurious to health, or so overcrowded as to be injurious to the health of the persons therein engaged or employed, or not provided with sufficient and suitable privy or urinal accommodation;

(*v*) any offensive trade or business so carried on as to be injurious to health or unnecessarily offensive to the public;

(*vi*) any well, tank or other water-supply injurious or dangerous to health;

(*vii*) any stable, cowshed or other building or enclosure in which any animal or animals are kept in such a manner or in such numbers as to be a cause of annoyance to the inmates of the premises, the neighbours or the public or injurious or dangerous to health;

(*Chapter XXI.—Nuisance.—Clause 433.*)

(*viii*) any burial or burning-ground which in the opinion of the Commissioners at a meeting is injurious or dangerous or likely to be injurious or dangerous to the health of persons living in the neighbourhood or to the public or offensive to such persons;

(*ix*) any accumulation or deposit, including any deposit of animal or vegetable or mineral refuse, which is offensive to the neighbours or to the public or injurious or dangerous to health or any deposit of offensive matter, refuse or offal or manure within fifty yards of any public street, wherever situated; and

(*b*) any act, omission, condition or thing which the Local Government by notification shall declare to be a nuisance, or which after due inquiry by the Commissioners on the complaint of two or more persons residing in the neighbourhood is found by the Commissioners to be a cause of annoyance to the neighbours or to the inmates of the premises affected or to the public or to be dangerous or injurious to health,

shall be deemed to be a nuisance to be dealt with under the provisions of this chapter :

Provided that no nuisance shall be deemed to have been committed in respect of any accumulation or deposit necessary for the effectual carrying on of any business, trade, or manufacture, if it be proved to the satisfaction of the Court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business, trade or manufacture, and that the best available means have been taken for preventing injury or danger thereby to the public health.

"Author of a nuisance" in this chapter means a person by whose act, default, or sufferance the nuisance is caused, exists or is continued, whether he is an owner or occupier or both owner and occupier or any other person.

Inspection of municipality for ascertaining existence of nuisance.

[*Cf.* P. H. (Scotland) Act, 1897, s. 17; P. H. Act, 1875, s. 92.]

433. (*1*) The Commissioners shall cause to be made from time to time inspection of the municipality with a view to ascertain what nuisances exist calling for removal under the powers of this Act, and shall enforce so far as possible the provisions of this Act in order to remove the same, and otherwise put in force the powers vested in them relating to public health, so as to secure the proper sanitary condition of all premises within the municipality.

(*2*) If the Commissioners or Health Officer or a Sanitary Inspector have or has reasonable grounds for believing that a nuisance exists in any premises, they or he may make an inspection of such premises at any hour, when the operations suspected to cause nuisance are believed to be in progress or are usually carried on or when the special conditions suspected to cause the nuisance are believed to exist, and may cause such work to be done as may be necessary for an effectual examination of the said premises, including the opening of the ground or surface, where necessary, and the testing of the drains.

(Chapter XXI.—Nuisance.—Clauses 434—436.)

(*3*) Where the ground or surface has been opened and no nuisance is found to exist, the Commissioners shall restore the premises at their own cost.

Municipal or police officer to give information as to nuisances.

434. Information of any nuisance under this chapter may be given to the Commissioners by any person and every municipal officer and every police officer having jurisdiction over the premises wherein the nuisance arises or continues shall bring the matter to the notice of the Commissioners or cause it to be brought to their notice.

[*Cf.* P. H. Act, 1875, s. 93.]

Notice to remove nuisance.

435. The Commissioners, if satisfied of the existence of a nuisance, shall serve a notice on the author of the nuisance, or if he cannot be found, then on the owner or occupier of the building or premises on which the nuisance arises or continues, requiring him to remove it within the time specified in the notice and to execute such works and do such things as may be necessary for that purpose and if the Commissioners think it desirable (but not otherwise) specifying any works to be executed to prevent a recurrence of the said nuisance:

[*Cf.* South African P. H. Act, s. 123; English P. H. Act, 1875, s. 94 *et seq*; and P. H. Act (Scotland), 1907; Ben. Act III of 1884, s. 210A.]

Provided that—

(*a*) where the nuisance arises from any want or defect of a structural character, or where the building or premises are unoccupied, the notice shall be served on the owner;

(*b*) where the author of the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner or occupier of the building or premises, the Commissioners shall remove the same and may do what is necessary to prevent the recurrence thereof.

Procedure in case owner fails to comply with notice.

436. (*1*) If the person on whom a notice to remove a nuisance has been served as aforesaid fails to comply with any of the requirements thereof within the time specified, or if the nuisance, although removed since the service of the notice, is in the opinion of the Commissioners likely to recur on the same premises, the Commissioners shall cause a complaint relating to such nuisance to be made before a Magistrate, and such Magistrate shall thereupon issue a summons requiring the person on whom the notice was served to appear before him.

[*Cf.* P. H. Act, 1875, ss. 95-96; and P. H. Act (Scotland).]

(*2*) If the Magistrate is satisfied that the alleged nuisance exists, or that, although removed, it is likely to recur on the same premises, he shall make—

(*a*) on the author thereof, or the owner or occupier of the premises, as the case may be, an order requiring him to comply with all or any of the requirements of the notice or otherwise to remove the nuisance within a time specified in the order and to do any works necessary for that purpose, or an order prohibiting the

(*Chapter XXI.—Nuisance.—Clauses 437, 438.*)

recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence, or an order both requiring the removal and prohibiting the recurrence of the nuisance, or

(*b*) an order on the Commissioners directing them to remove or prevent the recurrence of the nuisance, or both, at the expense of the author thereof or the owner or occupier of the premises, as the case may be.

(*3*) Before making any order the Magistrate may, if he thinks fit, adjourn the hearing or further hearing of the case until an inspection, investigation or analysis in respect of the nuisance alleged has been made by some competent person.

(*4*) Any costs incurred by the Commissioners in executing an order of the Magistrate under clause (*b*) of sub-section (*2*) shall be payable on demand, and if not paid on demand, may be recovered by distress and sale of the movable property of the defaulter. [*Cf.* P. H. Act, 1875, s. 98.]

Magistrate may order local authority to execute works in certain cases.

437. Whenever it appears to the satisfaction of the Magistrate that the author of the nuisance or that the owner or occupier of the premises is not known or cannot be found, the Magistrate may at once order the Commissioners to execute the works thereby directed and the cost of executing the same shall be payable on demand by the defaulter, if subsequently found, and if not paid on demand within fifteen days from the date of the execution of the work, may be recovered by distress and sale of the movable property of the defaulter, if known. [*Cf.* P. H. Act, 1875, s. 100.]

Award of compensation.

438. The Magistrate in making an order under this chapter may, if he is of opinion that the person on whom a notice has been served to remove a nuisance or any other person would have been entitled to compensation, had the proceedings been taken otherwise than under this chapter, award such compensation to such person. [New.]

CHAPTER XXII.

GENERAL.

Education.

Education Committee.

439. In every municipality there shall be constituted an Education Committee consisting of— [Cf. Ben. Act III of 1885, s. 65 B (1).]

(*a*) an officer appointed by the Local Government;

(*b*) not less than two, or more than four Commissioners appointed from among themselves by the Commissioners at a meeting; and

(*c*) not more than three residents of the municipality, not being Commissioners, appointed by the Commissioners at a meeting.

Duties of Education Committee.

440. It shall be the duty of the Education Committee, subject to the control of the Commissioners at a meeting and to the rules made by the Local Government— [Cf. Ben. Act III of 1884, s. 65B (2); B. & O. Act VII of 1922, s. 339.]

(*i*) to superintend all matters connected with the finance, accounts, maintenance and management of all schools maintained by the Commissioners, and

(*ii*) to determine the conditions to be complied with when grants are made by the Commissioners to schools.

Power to Local Government to prescribe amount to be spent on primary education

441. If the education cess is not levied in any municipality as provided by section 17 of the Bengal Primary Education Act, 1919, the Local Government may by general or special order prescribe the percentage of the income of that municipality (other than the income derived from the lighting, water and conservancy rates) which shall be applied to the purposes of primary education within the municipality. Ben. Act IV of 1919.

Transfer of funds by Government for education.

442. (*1*) The Local Government may transfer to the Commissioners such funds as they may deem necessary for expenditure on— [Cf. Ben. Act III of 1885, s. 65; B. & O. Act VII of 1922, s. 340.]

(*a*) the improvement of any school or class of schools within the municipality under private management; or

(*b*) the maintenance or improvement of any school or class of schools maintained and managed by the Commissioners; or

(*c*) the provision of buildings to be used as students' hostels in connection with any school mentioned in clause (*a*) or clause (*b*).

(*2*) The Commissioners shall be charged with, and be responsible for, the proper distribution of funds transferred under sub-section (*1*).

(*Chapter XXII.—General.—Clauses 443—446.*)

Powers to make rules regarding maintenance and management of schools.

443. The Local Government may make rules— [*Cf.* Ben Act III of 1885, ss. 62-64; B. & O. Act VII of 1922, s. 341.]

(*i*) determining the classes of schools which may be maintained or aided by the Commissioners;

(*ii*) regulating the construction and repair of buildings connected with such schools, including hostels;

(*iii*) regulating the appointment and salaries of masters and assistant masters of such schools;

(*iv*) regulating the establishment of scholarships generally, or for the furtherance of technical or any other special form of education; and

(*v*) regulating the conduct of business and duties of Education Committees.

The Board of Public Health.

Duties of the Board of Public Health.

444. The Board of Public Health shall, when so required, advise the Local Government in regard to any matter of Municipal administration affecting the public health, and shall perform such other duties with reference to such Municipal matters as may be assigned to it by rules made by the Local Government under this Act, and may make a representation to the Local Government in regard to any such matter. [*Cf.* B. & O. Act VII of 1922, s. 342 (2).]

Sarais, dharamsalas and lodging houses.

Power of Commissioners to regulate *sarais*, *dharamsalas* and lodging houses by by-law.

445. The Commissioners at a meeting may make by-laws providing—

(*a*) for the registration and inspection of *sarais*, *dharamsalas* and other lodging houses: [*Cf.* U. P. Act II of 1916, s. 298 (*f*); B. & O. Act VII of 1922, s. 343.]

(*b*) for the prevention of overcrowding and the promotion of cleanliness and ventilation therein;

(*c*) for the notices to be given and the precautions to be taken in the case of the outbreak therein of any infectious or contagious disease; and

(*d*) generally for the proper regulation of *sarais*, *dharamsalas* and other lodging houses.

Hackney-carriages.

Power to Commissioners to cancel license issued to the owner or driver of any hackney-carriage.

446. The Commissioners may cancel any license issued to any owner or driver of any hackney-carriage under the Calcutta Hackney-Carriage Act, 1919, as extended to any area within a municipality, if such owner or driver does not at such times as may from time to time be fixed by the Commissioners keep available for hire to the public, and ply for hire when required, the hackney-carriage and horses in respect of which the license has been granted under that Act; and on cancellation of such license the Commissioners may require such owner or driver, or any other person in whose possession the driver's ticket or license may be, to surrender the same to them forthwith. Ben. Act I of 1919.

(*Chapter XXII.—General:—Clauses 447—450.*)

Survey.

Survey of a municipality.

447. (*1*) The Commissioners at a meeting may order that a survey or demarcation of boundaries shall be made of any or all of the lands and buildings situated in the municipality and may move the Local Government to direct that all or any of the provisions of the Calcutta Survey Act, 1887, shall, so far as may be practicable, apply and be extended to such municipality.

[*Cf.* Ben. Act III of 1884, s. 223A.]

Ben. Act I of 1887.

(*2*) Where it appears to the Local Government that a survey or demarcation of boundaries should be made of all or any of the lands and buildings situated in a municipality, they may, by order, call on the Commissioners to make such a survey or to show cause why they should not be required to do so.

(*3*) The Local Government shall consider any objections and suggestions, which may be submitted by the Commissioners at a meeting and may either withdraw their order or direct that a survey shall be made.

(*4*) Where the order is made absolute, the Local Government may depute any person to make the survey and may require the Commissioners to defray from the Municipal Fund the cost of such survey, including the remuneration of the person deputed by the Local Government.

(*5*) Where a survey has been made under this Act of all or any of the lands and buildings situated in a municipality, the Local Government may call on the Commissioners to make provision for the maintenance of such survey.

Powers to make by-laws for maintenance of survey maps.

448. The Commissioners at a meeting may make by-laws—

(*a*) requiring the owner of any land or building to give notice to them of any alteration in the boundary of such land or of the erection of any new building thereon or of any material alteration or addition to a building,

(*b*) providing for the erection from time to time and for the maintenance by owners of lands or buildings of suitable boundary marks defining the limits of all lands which form separate holdings.

Dogs.

Power to require dogs to carry tokens and to order destruction of those without them.

449. The Commissioners may, by public notice, require that every dog in respect of which a tax has been paid, shall wear a collar to which shall be attached a token to be issued with a license by the Commissioners, and may from time to time, by like notice, order that, with effect from a date to be specified in the notice, every dog found within the municipality without a collar bearing such token will be destroyed or otherwise disposed of.

[*Cf.* B. & O. Act VII of 1922, s. 348.]

Disposal of mad and stray dogs.

450. (*1*) The Commissioners, by any person authorized by them in this behalf, may—

[*Cf.* Pun. Act III of 1911, s. 109; B. & O. Act VII of 1922, s. 349; U. P. Act II of 1916, s. 249; Ben. Act III of 1884, s. 218.]

(*i*) destroy or cause to be destroyed, or confine, or cause to be confined, for such period as the Commissioners may direct, any dog suffering from any loathsome disease or from rabies, or reasonably suspected to be

(*Chapter XXII.—General.—Clauses 451-453.*)

suffering from rabies, or bitten by any dog or other animal suffering or suspected to be suffering from rabies; and

(*ii*) confine, or cause to be confined, any dog found wandering about streets or public places without a collar to which a token issued by the Commissioners is attached, and charge for such detention such fee as may from time to time be fixed by the Commissioners at a meeting, and destroy or otherwise dispose of any such dog if within one week it is not claimed and the fee together with any license fee which may be due is not paid.

(*2*) No damages shall be payable by the Commissioners or by any person authorized under this section in respect of any dog confined, destroyed or otherwise disposed of under this section.

Noxious animals.

Rewards for destruction of noxious animals.

451. The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of the municipality. [*Cf.* Ben. Act III of 1884, s. 214.]

Licenses.

Holder of license to produce it when required.

452. Every person to whom a license has been granted under this Act shall, at all reasonable times while such license remains in force, if required so to do by the Commissioners or by any person authorized by them in that behalf, produce such license to the Commissioners or to the person so authorized. [*Cf.* Ben. Act III of 1884, s. 359.]

Suspension or revocation of license, etc.

453. Any Magistrate before whom any person is convicted of an offence against the provisions of this Act, relating to the use of any place for a purpose for which a license is required or of the non-observance of any of the by-laws or conditions relating thereto made or imposed under this Act, in addition to the fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such license, and the Commissioners, upon the conviction of any person for a second or subsequent like offence, may cancel his license. [*Cf.* Ben. Act III of 1884, s. 278.]

CHAPTER XXIII.

HILL MUNICIPALITIES.

General.

Application of Act to hill municipalities.

454. The provisions of this chapter shall apply only to hill municipalities and shall be construed in modification of, or as supplementing, other provisions of this Act in their application to such municipalities:

Provided that sections 222, 225, 261 and 262 shall not apply to hill municipalities.

Definitions.

Extension of definitions of "drain" and "masonry building"

455. (*1*) The definition of "drain" under section 3 of this Act shall, in the case of a hill municipality, be deemed to include a *jhora*, water-course, or natural drainage line, and the Local Government may, by notification, define for the purpose of this Act the limits of any *jhora*, water-course, channel or natural drainage line within a hill municipality. [*Cf.* Ben. Act III of 1884, s. 224A.]

(*2*) For the purposes of Chapter X in its application to hill municipalities the term "masonry building" shall be deemed to include a "framed building."

Definitions.

456. In this chapter— [*Cf.* Ben. Act III of 1884, s. 6.]

(*i*) "Government road" means a road, street, square, court, alley or passage maintained by the Government or at the public expense;

(*ii*) "private bridge" means any bridge which is not a public bridge as defined in this section;

(*iii*) "private drain" means any drain which is not a public drain as defined in this section;

(*iv*) "private road" means any road, street, square, court, alley or passage which is not a public road or Government road as defined in this section;

(*v*) "public bridge" means a bridge on or over which a public road or any public work is carried, and the property in which is for the time being vested in the Commissioners;

(*vi*) "public drain" means any drain which is vested in the Commissioners;

(*vii*) "public road" means a "public street" as defined in section 3 of this Act, but except in sections 220, 225, 238, 240 and rule 5 of Schedule VIII shall be deemed to exclude a Government road.

Roads.

Absolute closing of public road.

457. (*1*) If it appears to the Commissioners that any public road or part thereof— [*Cf.* Ben. Act III of 1884, s. 201A.]

(*a*) threatens the stability or security of any hill-side or bank or any immovable property thereon, or

(*b*) in consequence of its condition or its situation with reference to any adjacent hillside or

(Chapter XXIII.—Hill Municipalities.—Clauses 458—460.)

bank cannot be efficiently maintained or repaired except at a cost which, in their opinion, is unreasonable,

the Commissioners may, by public notice, declare such road or part to be absolutely closed:

Provided that the Commissioners shall, before declaring any public road or part thereof to be closed, be bound to provide other reasonably sufficient means of access to holdings adjacent to such road or part, if no such means of access already exist.

(*2*) From the date of any notice published under sub-section (*1*) in respect of any public road or part thereof, the Commissioners shall not be bound to maintain or repair such road or part; and the site thereof may be disposed of or otherwise dealt with in such manner as the Commissioners may determine:

Provided that, if the Commissioners determine to sell or to let on lease or otherwise transfer any part of such site which is adjacent to any private land or building, the owner of such land or building shall have a prior right to buy or take on lease such part at a reasonable rate.

Control over private roads and bridges.

458. All private roads and bridges shall be subject to the inspection and control of the Commissioners. [*Cf.* Ben. Act III of 1884, s. 201B.]

Control over construction or alteration of private road.

459. (*1*) Every person who intends to construct, re-construct or alter a private road shall send to the Commissioners an application for permission to execute the work. [*Cf.* Ben. Act III of 1884, s. 201C.]

(*2*) Every such application shall be accompanied by the documents or particulars prescribed in this behalf in Schedule VII.

(*3*) Every person applying for permission to construct, re-construct or alter a private road must further mark out on the ground the alignment of the road for inspection by the Commissioners or an officer authorized by them in this behalf.

(*4*) The permission referred to in sub-section (*1*) may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in the said Schedule VII.

(*5*) No work referred to in sub-section (*1*) shall be commenced without the written permission of the Commissioners.

Re-construction, etc., of private road

460. If it appears to the Commissioners that any private road is so situated or is in such a condition as to threaten the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner— [*Cf.* Ben. Act III of 1884, s. 201D.]

(*a*) to re-construct, re-grade, divert, alter or repair such road, or

(*b*) to make a revetment or retaining-wall on either side or both sides of such road, or

(*Chapter XXIII.—Hill Municipalities.—Clauses 461—464.*)

(*c*) to take such other order with such road as may be specified in the notice.

Provision or enlargement of waterway on private road.

461. If it appears to the Commissioners that waterway ought to be provided on any private road or that the waterway provided on any private road ought to be enlarged, they may, by written notice, require the owner of the road— [Cf Ben Act III of 1884, s 201E]

(*a*) to provide and maintain waterway, or

(*b*) to enlarge the existing waterway,

as the case may require.

Rules as to construction, etc., of private roads and bridges

462. Whenever any private road is to be constructed, re-constructed, re-graded, diverted, altered or repaired, and whenever waterway for any private road is to be provided or enlarged, in pursuance of section 459. section 460 or section 461, the work shall be executed in accordance with the rules contained in Schedule VII, so far as they are applicable to the particular case. [Cf Ben Act III of 1884, s 201F]

Power to close private road.

463. If it appears to the Commissioners that the existence of any private road threatens the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner to close the road and to take such order with the site thereof as they may consider necessary for the stability or security of such hillside, bank or property and as may be prescribed in the notice: [Cf Ben. Act III of 1884, s 201G]

Provided that no notice shall be issued under this section in respect of any private road which constitutes the only approach to a building, unless, in the opinion of the Commissioners, another road affording a suitable approach to the building can be constructed at reasonable expense.

Removal of materials falling upon or into public road or drain

464. (*1*) Whenever any building, wall, revetment or other erection, or any part thereof, or any stone, tree, soil or debris from private premises, falls down and obstructs any public road or drain, the Commissioners may cause the obstruction to be removed. [Cf Ben Act III of 1884, s 207]

(*2*) All stone and trees so removed shall be separately heaped near the spot, and a notice shall be affixed in the vicinity calling upon the persons from whose premises the stone or trees or any of the same has or have fallen to take away the same.

(*3*) If, in the course of removing any obstruction under sub-section (*1*), it be found necessary to break up or blast any stone or to cut up any tree, the work shall be executed by the Commissioners; and if any persons desire, in pursuance of a notice affixed under sub-section (*2*), to take away any stone or tree which has been so dealt with, they must first pay to the Commissioners the expenses incurred by them under this sub-section.

(*4*) If such stone or trees be not taken away by the said persons within seventy-two hours after the affixing of the said notice, or within any further period allowed by the Commissioners, the same shall become the property of the Commissioners.

(Chapter XXIII.—Hill Municipalities.—Clauses 465-468.)

Removal of debris falling upon or into private road or drain

465. If it appears to the Commissioners that any debris which has fallen upon or into any private road or drain ought to be removed, they may— [Cf Ben Act III of 1884, s 207A]

(*a*) cause such debris to be removed at the expense of the owner of the road or drain, or

(*b*) by written notice require the said owner to remove the debris.

Power to close a road or part of a road for repairs or other public purpose

466. The Commissioners may close temporarily any public road or part of a public road for the purpose of repairing such road, or for the purpose of constructing any sewer, drain or bridge, or for any other purpose: provided that the Commissioners so closing any road, shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road. [Cf Ben Act III of 1884, s 201]

Drains.

Control over construction or alteration of private drains.

467. (*1*) Every person who intends to construct, re-construct, alter, stop-up or obstruct any private drain shall send to the Commissioners an application for permission to execute the work. [Cf Ben. Act III of 1884 s 224B]

(*2*) Every such application shall be accompanied by a general description of the drain.

(*3*) The permission referred to in sub-section (*1*) may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in Schedule VIII.

(*4*) No work referred to in sub-section (*1*) shall be commenced without the written permission of the Commissioners.

Re-construction, repair, etc, of private drains, gutters etc

468. The Commissioners may, by written notice, require the owner of any land or building— [Cf Ben. Act III of 1884, ss 224C and 244Z]

(*a*) to re-construct, enlarge, extend, alter, repair, make efficient, stop-up or remove any drain belonging to such land or building, or

(*b*) to alter the inclination or direction of any such drain, or

(*c*) to provide movable coverings or gratings for any such drain of such nature as may be specified in the notice, or

(*d*) to carry any such drain to such point of outlet or of junction with some other drain as may be specified in the notice.

(*2*) The Commissioners may, by written notice, require the owner or occupier of any building—

(*a*) to provide and maintain a sufficient number of suitable roof-gutters and down pipes or masonry platforms for carrying water from the roof of the building into such drains as may be specified in notice, or

(*b*) to renew, alter, repair or remove any such gutters, pipes or platforms already provided for the building.

(Chapter XXIII.—Hill Municipalities.—Clauses 469-471.)

(*3*) The said gutters must be of such dimensions, and have such slope, and the said pipes must be of such dimensions, and the bends in such pipes must be made at such angles, as may be prescribed by rules made by the Commissioners at a meeting.

Power to require provision of private drain.

469. If any land or building is not drained to the satisfaction of the Commissioners, they may, by written notice, require the owner to provide a drain therefor, at such inclination, and to such point of outlet or of junction with some other drain as may be specified in the notice. [*Cf.* Ben. Act III of 1884, s. 227.]

Private drainage in combination.

470. (*1*) If it appears to the Commissioners that any lands or buildings belonging to different owners can be drained, or the drainage thereof improved, more economically, or advantageously in combination than separately, the Commissioners may cause such lands or buildings to be drained, or the drainage thereof to be improved, in such manner as they may consider suitable. [*Cf.* Ben. Act III of 1884, s. 228.]

(*2*) The Commissioners may cause any drain which has been provided or improved under sub-section (*1*) to be maintained or repaired in such manner as they may consider suitable.

(*3*) All expenses incurred under sub-section (*1*) or sub-section (*2*) in connection with the drainage of any lands or buildings, shall be paid by the owners of such lands or buildings in proportion to the benefits derived by them respectively.

(*4*) The said proportion shall be determined by the Commissioners.

Safety of the hillside.

Power where buildings, etc., threaten the stability of other immovable property

471. If it appears to the Commissioners that any building or portion of a building, or anything affixed to a building or any wall or structure on any land, is in such a condition as to threaten the stability or security of any hillside or bank or any immovable property thereon, [*Cf.* Ben. Act III of 1884, s. 210B.]

the Commissioners may, by written notice, require the owner of such land or building—

(*a*) to take down such building, portion, thing, wall or structure and remove the materials, or

(*b*) to secure or repair such building, portion, thing, wall or structure, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof or to take such other order therewith as may be prescribed in the notice, and

(*c*) in case (*a*), also to take such order with the site of such building, wall or structure, for ensuring the stability or security of any hillside or bank or any immovable property thereon, as may be prescribed in the notice.

(*Chapter XXIII.—Hill Municipalities.—Clauses 472—475.*)

Power where hillside or bank threatens the safety of buildings.

472. If it appears to the Commissioners that the condition or situation of any hillside or bank, being private property, is such as to threaten the safety of any building, and that the safety of such building cannot be ensured by taking action under section 471 and also that such building threatens the safety of some other building, they may, by written notice, require the owner of such first-mentioned holding— [Cf. Ben. Act III of 1884, s. 210C.]

(*a*) to take down the building and remove the materials, or

(*b*) to secure the building, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice;

and may also, by written notice, require the owner of such other building to secure the same, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice.

Power to require revetting, turfing or sloping.

473. If it appears to the Commissioners that the condition or the situation of any land, being private property, is such as to threaten the stability or security of any hillside or bank or any immovable property thereon, the Commissioners may, by written notice, require the owner of the land to do all or any of the following things, namely :— [Cf. Ben. Act III of 1884, s. 248A.]

(*a*) to construct and maintain a revetment, retaining-wall or toe-wall upon any part of the land;

(*b*) to re-construct, enlarge, strengthen, alter or repair any revetment, retaining-wall or toe-wall already standing on the land;

(*c*) to turf the land or any portion thereof;

(*d*) to slope the land or any portion thereof.

Execution of work where owners of adjacent property would be benefited.

474. If any owner to whom a notice is issued under section 473 represents to the Commissioners, within fifteen days after the service of the notice, that the work required by the notice will directly and substantially benefit the owners of any adjacent buildings or land, [Cf. Ben. Act III of 1884, s. 248B.]

the Commissioners may, after hearing all the owners concerned, themselves cause the said work to be executed;

and the expenses thereby incurred shall be recovered from any or all of such owners, in such proportions as the Commissioners may direct.

Power to execute work in combination.

475. If it appears to the Commissioners that lands or buildings belonging to two or more owners can be protected, by the execution of works of the nature referred to in section 473, more economically or advantageously in combination than separately, [Cf. Ben. Act III of 1884, s. 248C.]

(Chapter XXIII.—Hill Municipalities.—
Clauses 476—479.)

the Commissioners may themselves cause such works or any of them to be executed, maintained and kept in repair;

and the expenses thereby incurred shall be recovered from the said owners, in such proportion as the Commissioners may direct.

Power to execute works where public road, drain, revetment or retaining-wall is affected.

476. Notwithstanding anything contained in section 473, the Commissioners may, at any time, themselves cause any revetment, retaining-wall or toe-wall to be constructed, re-constructed, enlarged, strengthened, altered or repaired on any private land immediately abutting upon any public road, drain, revetment or retaining-wall; [Cf. Ben. Act III of 1884, s. 248D.]

and the expenses thereby incurred shall be paid by the Commissioners and the owner of such land in such proportions as the Commissioners may direct.

Rules as to revetting, turfing and sloping.

477. Whenever any revetment, retaining-wall or toe-wall is to be constructed, re-constructed, enlarged, strengthened, altered or repaired, or any land is to be turfed, or sloped in pursuance of sections 460, 471, 472, 473, 474, 475 or 476, the work shall be executed in accordance with the rules contained in Schedule IX, so far as they are applicable to the particular case. [Cf. Ben. Act III of 1884, s. 248E.]

Control over occupation of buildings.

Power to prohibit occupation of unsafe or insanitary building.

478. *(1)* If it appears to the Commissioners that any building or the site thereof is, in consequence of its condition or of its situation with reference to any hillside or bank, unsafe, [Cf. Ben. Act III of 1884, s. 244 V.]

they may, by written notice, prohibit the owner or any other person from occupying or continuing to occupy the building or from permitting it to be occupied until the building or the site, as the case may be, is rendered safe to the satisfaction of the Commissioners.

(2) If it appears to the Commissioners that the drainage of, or the latrine accommodation provided for, any masonry or framed building is defective,

they may, by written notice, prohibit the owner from letting the building for occupation until the defects have been remedied to their satisfaction.

Appeal.

Appeal to specially appointed Engineer.

479. *(1)* The Local Government may, by notification in the *Calcutta Gazette*, appoint an Engineer to hear appeals under this Act in respect of hill municipalities, [Cf. Ben. Act III of 1884, s. 251D.]

(Chapter XXIII.—Hill Municipalities.— Clauses 480—483.)

(2) An appeal shall lie to the said Engineer from any order (not being an order apportioning expenses) or requisition made under clause (b) of sub-section (1) of section 304, sub-sections (2) and (3) of section 307 sections 348, 459, 467, 470, 471, 472, 473, 474, 475, 476, or 478.

Appeal to Commissioner of the Division.

480. An appeal shall lie to the Commissioner of the Division from any order apportioning expenses incurred in pursuance of sections 470, 473, 475, or 476. [Cf. Ben. Act III of 1884, s. 351E.]

Limitation of time for appeal.

481. Every appeal under section 479 or section 480 must be presented within a period of thirty days after the date of the order or requisition against which the appeal is made: [Cf. Ben. Act III of 1884, s. 351F.]

Provided as follows:—

(a) if in any case the said period expires on a day when the office of the aforesaid Engineer or Commissioner is closed, the appeal may be presented on the day that the said office is reopened;

(b) any appeal may be admitted after the expiration of the said period when the appellant satisfies the appellate authority that he had sufficient cause for not presenting the appeal within such period.

Assessors in appeals to Commissioner of the Division.

482. (1) In dealing with any appeal preferred to him under section 480 the Commissioner shall be assisted by two assessors, who shall be selected and summoned by him for each appeal, or group of appeals, from a list to be prepared annually by the Deputy Commissioner: [Cf. Ben. Act III of 1884, s. 351G.]

Provided that, if any assessor so summoned fails to appear, the appeal may be heard in his absence.

(2) The assessors, if present, shall be consulted by the Commissioner, and their opinion shall be recorded in writing; but the Commissioner shall not be bound to conform to their opinions.

Record of decision on appeal or reference.

483. (1) If the Engineer appointed under section 479, or the Commissioner of the Division, rejects any appeal preferred to him under this Act, he shall, by written order, specifically state the grounds for such rejection. [Cf. Ben. Act III of 1884, s. 351H.]

(2) The said Engineer shall, when deciding any reference made to him under this Act, specifically state in writing the grounds for his decision.

(3) A copy of all orders passed by the said Engineer or Commissioner on any such appeal, or by the said Engineer on any such reference, shall forthwith be forwarded by him to the Commissioners, who shall thereupon inform the appellant, or the person who made the reference, as the case may be, of such orders.

(*Chapter XXIII.—Hill Municipalities.—Clause 484.*)

By-laws.

Additional power to make by-laws in hill municipalities.

484. (*1*) In addition to any by-laws that they may make under any other section of this Act, the Commissioners of a hill municipality may, at a meeting, make by-laws— [*Cf.* Ben. Act III of 1884, s. 350A.]

(*a*) enforcing, regulating or prohibiting the cutting or destroying of trees or shrubs and the planting and maintenance of particular kinds of trees or shrubs, and regulating or prohibiting the making of excavations or removal of soil or quarrying; and providing for the alteration, repair and proper maintenance of buildings and compounds, for the closing of roads and by-paths and for the general protection of the surface land on any hillside where such by-laws appear to the Commissioners to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, the protection of land against erosion, or the deposit thereon of sand, gravel or stones;

(*b*) regulating the rule of the road;

(*c*) rendering licenses necessary within the municipality for animals, vehicles and other conveyances let out on hire for a day or part thereof;

(*d*) prescribing the conditions subject to which such licenses may be granted, refused, suspended or withdrawn;

(*e*) regulating the charges to be made for the hire of such animals, vehicles and other conveyances;

(*f*) preventing the straying of poultry;

(*g*) preventing or regulating the grazing or straying of cattle on hillsides or banks; and

(*h*) regulating any of the matters referred to in sections 459, 462, 467 and 477. [*Cf.* Ben. Act III of 1884, s. 351B.]

(*2*) The word "cattle," as used in clause (*g*), shall have the same meaning as in the Cattle Trespass Act, 1871. I of 1871.

CHAPTER XXIV.

Penalties.

Certain offences punishable with fine.

485. (*1*) Whoever commits any offence by—

[*Cf.* C. M. Act, s. 488; Ben. Act III of 1884, ss. 57, 100, 111, 137, 146, 154, 156, 162, 166, 170, 216, 217, 218, 219, 224A, 266, 268, 269, 270, 271, 272, 272A, 272B, 272C, 272D, 273, 274, 275, 276, 277, 334, 344 and 345.]

(*a*) contravening any provision of any of the sections, sub-sections, clauses of sections or provisos of this Act mentioned in the first column of the following table, or

(*b*) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses or provisos

shall be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

(*2*) Whoever, after having been convicted of any offence referred to in clause (*a*) or clause (*b*) of sub-section (*1*), continues to commit such offence shall be punished, for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in this behalf in the fourth column of the said table.

Explanation.—The entries in the second column of the following table headed "Subject" are not intended as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions, but are inserted merely as references to the subject thereof.

(*Chapter XXIV.—Penalties.—Clause 485.*)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 58, sub-section (*2*), clause (*e*).	Commissioners unlawfully acquiring share or interest or holding office of profit.	Five hundred rupees.	
Section 115 ...	Requisition for list of the number of persons residing in a holding.	One hundred rupees.	
Section 122 ...	Requisition for returns, rent or annual value and description of holdings.	Twenty rupees ...	Five rupees.
Section 131 ...	Obligation to give notice of re-occupation of unoccupied holding.	Twenty-five rupees ...	Five rupees.
Section 132 ...	Obligation to give notice of transfer of title in land or building.	Twenty-five rupees ...	Five rupees.
Section 152 ...	Unlawful purchase at a municipal auction.	Five hundred rupees.	
Section 159, sub-section (*1*).	Obligation to forward statement of carriages and animals liable to taxation.	Twenty rupees.	
Section 160 ...	Obligation to forward statement of carriages and animals liable to taxation.	Twenty rupees.	
Section 163 ...	Keeping or possessing carriage or animal without a license.	Three times the amount payable for license, exclusive of the amount so payable.	
Section 166, sub-section (*2*).	Failure to attend when summoned.	Fifty rupees.	
Section 171 ...	(*i*) Keeping or possessing dog without a license.	Twice the amount payable for license, exclusive of the amount so payable.	
	(*ii*) Failure to attend when summoned.	Fifty rupees.	
Section 177 ...	(*i*) Keeping or possessing cart not duly registered.	Twice the amount payable for license, exclusive of the amount so payable.	
	(*ii*) Failing to affix registration number to cart.	Five rupees.	
Section 186 ...	Unlawfully refusing to leave a municipal ferry boat or to remove goods therefrom.	Ten rupees.	
Section 187 ...	Keeping unauthorised ferry boat.	Fifty rupees ...	Ten rupees
Section 193 ..	Refusing to pay or avoiding payment of toll.	Fifty rupees.	
Section 196 ...	Failure to hang up table of tolls.	Fifty rupees ...	Ten rupees.

(Chapter XXIV.—Penalties.—Clause 485.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 200 ...	Demanding or taking unauthorized toll.	Fifty rupees.	
Section 206, sub-section (1).	(i) Prohibition of erection of, or addition to, building or wall within street alignment prescribed under section 204.	Two hundred and fifty rupees.	Twenty-five rupees.
	(ii) Requisition to remove building erected or added within street alignment prescribed under section 205.	Fifty rupees ...	Ten rupees.
Section 206, sub-section (3).	Prohibition of erection of, or addition to, building between street alignment and building-line prescribed under section 205.	Two hundred rupees ...	Twenty rupees.
Section 206, sub-section (4).	Requisition to remove building erected or added to between street alignment and building-line prescribed under section 205.	Fifty rupees ...	Ten rupees
Section 212 ...	(i) Prohibition of erection of, or addition to, building or wall within street alignment of street projected under section 211.	Two hundred and fifty rupees.	Twenty-five rupees.
	(ii) Requisition to remove building erected or added to on site between street alignment and building-line of a street projected under section 211.	Fifty rupees ...	Ten rupees.
Section 214 ...	Prohibition to dispose of land as building-sites without making street giving access to it.	Five hundred rupees.	
Section 215 ...	Unlawfully making or laying out a private street.	Two hundred and fifty rupees.	Twenty-five rupees.
Section 217, sub-section (1).	Requisition on owner of private street or owner or occupier of adjoining land to level, etc., such street.	One hundred rupees ...	Ten rupees.
Section 219, sub-section (2).	Unlawfully interfering with arrangement made for guarding against accident.	Fifty rupees.	
Section 220, sub-section (2).	Unlawfully constructing hoardings or fences, etc., or removing the same or failure to construct or to keep the same sufficiently lighted at night.	One hundred rupees ...	Twenty rupees.
Section 221 ...	Unlawfully depositing moveable property on, or making excavation in, or enclosing any public street or failure to make suitable provision for passage of the public, to erect sufficient fences and to keep the same sufficiently lighted.	One hundred rupees ...	Twenty rupees.
Section 223, sub-section (1).	Putting up verandahs, etc., to project over street without permission.	Two hundred and fifty rupees.	
Section 223, sub-section (4).	Requisition on owner or occupier of building to comply with condition subject to which permission was given to put up verandahs, etc., projecting over street.	One hundred rupees ...	Twenty rupees.

(*Chapter XXIV.—Penalties.—Clause 455.*)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 224, sub-section (*1*).	Constructing platform upon or over any public street or drain without permission.	Two hundred and fifty rupees.	Twenty-five rupees.
Section 224, sub-section (*2*).	Failure to take out a license for platform.	Fifty rupees ...	Ten rupees.
Section 225 ...	Requisition on owner to remove obstruction to public street or drain caused by fallen building, wall, etc.	Fifty rupees ...	Ten rupees.
Section 226 ...	Digging or cutting up a public street without permission.	One hundred rupees.	
Section 227 ...	Requisition on owner or occupier to put up and keep in good condition proper troughs and pipes for receiving or carrying off water from building or land.	Fifty rupees ...	Ten rupees.
Section 228, sub-section (*1*), clause (*a*).	Requisition to remove wall, hoarding, etc., over any house-gully or any public street, drain, etc.	Fifty rupees ...	Ten rupees.
Section 229, sub-section (*1*).	Requisition on owner or occupier of building to remove or alter verandah, platform or other structure or fixture attached to building.	One hundred rupees ...	Ten rupees.
Section 230 ...	Requisition on owner of land to trim or cut hedges or trees.	Fifty rupees ...	Ten rupees.
Section 231 ...	Unlawfully destroying, pulling down, etc., name of public street or number of house.	Twenty rupees.	
Section 237 ...	Direction to deposit sewage, etc., in specified places and at specified times.	Ten rupees.	
Section 238, sub-section (*2*).	Placing rubbish or offensive matter on a public street, except at specified times.	Ten rupees.	
Section 239, sub-section (*2*), clause (*a*).	Direction to collect and remove rubbish and offensive matter accumulating on business premises or on premises on which building work is going on.	Ten rupees.	
Section 240 ...	Keeping dirt, dung, etc., in or about a house, except in proper receptacle.	Ten rupees.	
Section 241, (*i*) (*ii*) or (*iii*).	Throwing any rubbish, offensive matter, etc., upon any street or in any sewer or drain in proper use of drain or discharge of water, steam, etc.	Ten rupees.	
Section 242, sub-section (*1*).	Failure to dispose of dead bodies of animals.	Twenty-five rupees.	
Section 245, sub-section (*1*).	Provision for privy and urinal for building.	Fifty rupees.	
Section 245, sub-section (*3*).	Provision for privy, urinal and bathing accommodation for building.	Fifty rupees.	
Section 246, sub-section (*1*).	Requisition on owner of premises to provide or alter privy or urinal or bathing or washing place for or in premises.	Fifty rupees ...	Five rupees.

(*Chapter XXIV.—Penalties.—Clause 485.*)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 247 ...	Construction, renewal, etc., of house-drain, cess-pool, etc., and appurtenances thereof in contravention of rules.	One hundred rupees ...	Ten rupees.
Section 248 ...	Construction or keeping of house, drain, service-privy, urinal or cess-pool within fifty feet of tank, etc.	Fifty rupees ...	Ten rupees.
Section 250 ...	Disobeying any lawful order or requisition to repair, alter, remove, shut off, or provide latrine, etc.	Fifty rupees ...	Ten rupees.
Section 251 ...	Failure to provide house-gally ...	Fifty rupees ...	Ten rupees.
Section 253 ...	Failure or refusal to keep latrine, urinal, etc., in proper condition.	Fifty rupees ...	Ten rupees.
Section 259 ...	Unlawfully connecting house-drain with municipal drain.	One hundred rupees ...	Ten rupees.
Section 260 ...	Unlawful construction, alteration, etc., of drains leading to municipal sewers, etc.	One hundred rupees ...	Ten rupees.
Section 262 ...	Requisition on owner of premises to make house-drain and provide appliances or fittings or to remove house-drain, etc.	Fifty rupees ...	Five rupees.
Section 263 ...	Requisition on owner of premises to make house-drain communicating with closed cess-pool.	Fifty rupees ...	Five rupees.
Section 277, sub-section (*1*).	Requisition on owner or occupier to establish connection from water main.	One hundred rupees ...	Ten rupees.
Section 277, sub-section (*2*).	Requisition on owner or occupier to lay down separate service-pipes for separate holdings.	One hundred rupees ...	Ten rupees.
Section 285 ...	Fraud in respect of meter ...	One hundred rupees.	
Section 286 ...	Injuring meter or fittings thereof.	One hundred rupees.	
Section 288, sub-section (*3*).	Improper use of water supplied for domestic purposes.	Ten rupees	Five rupees.
Section 290, sub-section (*4*).	Requisition to alter or add to work, pipe or fitting unsuitable for the purpose.	Fifty rupees ...	Five rupees.
Section 292 ...	(*i*) Taking water out of municipal limits, without authorization.	One hundred rupees.	
	(*ii*) Negligently allowing water to be wasted.	Twenty rupees.	
	(*iii*) Unlawfully drawing off or diverting water from water-works.	Five hundred rupees ...	Fifty rupees.
Section 294 ...	Commencing work for supply of water to any premises without sending estimate and specification.	One hundred rupees ...	Ten rupees.
Section 301, sub-section (*2*).	Prohibition of erection of building without permission or so as to deprive another building of proper means of access.	Two hundred rupees ...	Fifty rupees.

(*Chapter XXIV.—Penalities.—Clause 485.*)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 306 ...	Sending written notice after completion of erection of a new building.	Fifty rupees.	
Section 307, sub-section (*2*).	Requisition on owner to make specified alterations.	Two hundred and fifty rupees in the case of a masonry building and twenty-five rupees in the case of a hut.	Twenty-five rupees in the case of a masonry building and five rupees in the case of a hut.
Section 309, sub-section (*1*).	Constructing the roofs or external wall of a house with inflammable materials without permission.	Twenty-five rupees ...	Five rupees.
Section 309, sub-section (*2*).	Requisition on owner of a building to remove roof or external wall of inflammable materials.	Fifty rupees ...	Five rupees.
Section 319, sub-section (*1*).	Requisition to discontinue the erection of a new building or other unlawful work.	Two hundred rupees ...	Twenty-five rupees.
Section 322 ...	Requisition on owners or occupiers to carry out in *bustee* hut-improvements specified in the Schedule annexed to the report.	Two hundred rupees ...	Twenty-five rupees.
Section 326, sub-section (*2*).	Failure to keep open private street in *bustee* for scavenging or other purposes and for use of tenants.	Fifty rupees ...	Ten rupees.
Section 327 ...	Failure to keep open bathing and privy accommodation in *bustee* for use of tenants.	Fifty rupees ...	Ten rupees.
Section 328, sub-section (*2*).	Requisition on owner to maintain in proper order street, drains, etc., in *bustee* according to standard plan.	Two hundred rupees ...	Twenty rupees.
Section 329, sub-section (*6*).	Requisition on owner to carry out improvements before re-erecting huts.	One hundred rupees ...	Ten rupees.
Section 330, sub-section (*4*).	Erection of hut or portion of hut within alignment prescribed for private streets in *bustee* or other area.	Fifty rupees.	
Section 330, sub-section (*5*).	Failure to keep open private street in *bustee* for scavenging or other purposes and for use of tenants.	Fifty rupees ...	Ten rupees.
Section 331 ...	Requisition on owners or occupiers to remove huts.	Fifty rupees ...	Ten rupees.
Section 332 ...	Requisition on person erecting masonry building in *bustee* to leave space of twenty feet from centre line of street.	One hundred rupees ...	Twenty rupees.
Section 333 ...	Direction to set apart tanks, wells, etc., for drinking, culinary, bathing and washing purposes.	Fifty rupees ...	Five rupees.
Section 334 ...	Requisition to cleanse or protect tank, well, etc., used for drinking or culinary purposes.	Fifty rupees ...	Five rupees.

(Chapter XXIV.—Penalties.—Clause 485.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 335 ...	Prohibition of use of polluted water for drinking or culinary purposes.	Fifty rupees.	
Section 338 ...	Requisition to take measures to prevent the use of polluted water	Fifty rupees ...	Five rupees.
Section 341, sub-section (1).	Requisition to cleanse, fill up or de-water well, pool, ditch, tank, pond or marshy ground or to drain off or remove waste or stagnant water.	One hundred rupees ...	Ten rupees
Section 342, sub-section (1).	Making excavation or digging cess-pool, tank, pond, well or pit.	One hundred rupees.	
Section 342, sub-section (2).	Requisition to fill up excavation, cess-pool, tank, etc., unlawfully made.	Fifty rupees ...	Five rupees.
Section 343, sub-section (1).	Requisition to secure or protect dangerous well, tank or excavation.	One hundred rupees ...	Ten rupees.
Section 344 ...	Prohibition of cultivation of crops, use of manure or method of irrigation injurious to health and the growth of water hyacinth and noxious weeds.	Fifty rupees ...	Five rupees.
Section 346 ...	Requisition on owner or occupier to lime-wash or otherwise cleanse building.	Twenty-five rupees ...	Five rupees.
Section 347 ...	Requisition on owner or occupier to clear noxious vegetation and to improve bad drainage.	One hundred rupees ...	Ten rupees.
Section 348, sub-section (1).	Requisition on owner or occupier to take down, repair or secure wall or building or fixture in a ruinous state, etc.	Two hundred and fifty rupees.	One hundred rupees.
Section 348, sub-section (2).	Requisition on inmate to vacate building in ruinous state, etc.	One hundred rupees ...	Fifty rupees.
Section 349, sub-section (1).	Requisition on owners or occupiers to execute works or take measures with respect to buildings or block of buildings in order to prevent risk of disease.	Five hundred rupees in the case of a masonry building or block of masonry buildings and one hundred rupees in the case of a hut or block of huts.	One hundred rupees in the case of a masonry building or block of masonry buildings and twenty rupees in the case of a hut or block of huts.
Section 350, sub-section (3).	Using building declared unfit for human habitation.	Two hundred and fifty rupees.	Fifty rupees.
Section 351, sub-section (2).	Requisition on owner or occupier to, demolish or execute work on building declared unfit for human habitation.	Two hundred and fifty rupees.	Fifty rupees.
Section 352, sub-section (1).	Requisition on owner to abate overcrowding in building or room.	Twenty-five rupees ...	Five rupees.
Section 352, sub-section (4).	Requisition on inmate to vacate overcrowded building or room.	Twenty-five rupees ...	Five rupees.

(Chapter XXIV.—Penalties.—Clause 485.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
Section 354, sub-section (*1*).	Using any place for any of the purposes specified in section 354 without license.	One hundred rupees ...	Ten rupees.
Section 354, sub-section (*3*).	Breach of condition of license under section 354.	One hundred rupees ...	Ten rupees.
Section 356, sub-section (*1*).	Keeping horses and cattle for trade or business without license.	Fifty rupees ...	Five rupees.
Section 356, sub-section (*2*).	Breach of condition of license issued under section 356.	Fifty rupees ...	Five rupees.
Section 357, sub-section (*1*).	Keeping horses and cattle except in public stables.	Fifty rupees ...	Five rupees.
Section 357, sub-section (*4*).	Breach of condition of license issued under section 357.	Fifty rupees ...	Five rupees.
Section 358, sub-section (*1*).	Keeping pigs, sheep, etc., without license.	Fifty rupees ...	Five rupees.
Section 358, sub-section (*2*).	Breach of condition of license issued under section 358.	Fifty rupees ...	Five rupees.
Section 361 ...	Information of existence of infectious disease in any building.	Fifty rupees.	
Section 362, sub-section (*3*).	Removal to hospital of patient suffering from infectious or contagious disease.	One hundred rupees.	
Section 363, sub-section (*1*).	Requisition on occupier to vacate building or part thereof to admit of disinfection.	Fifty rupees ...	Ten rupees.
Section 365 ...	Letting infected building ...	Five hundred rupees.	
Section 366, sub-section (*2*), clause (*b*).	Direction to disinfect clothing, bedding or other articles likely to retain infection.	Fifty rupees ...	Five rupees.
Section 367 ...	Washing infected articles at unauthorized places.	Fifty rupees.	
Section 368 ...	Infected person making, selling or touching any article of food or medicine or drug or taking part in business of washing clothes.	Fifty rupees.	
Section 369, sub-section (*1*).	Giving, lending, etc., infected article.	Fifty rupees.	
Section 370, sub-section (*1*).	Infected person exposing himself in a public place or allowing himself to be carried in public conveyance, etc., and person in charge of an infected person, dead body or infected article permitting the same to be so exposed or carried, as the case may be.	Fifty rupees.	
Section 371, sub-section (*1*).	Failure to take public conveyance to appointed place for disinfection.	One hundred rupees.	
Section 371, sub-section (*4*).	Using infected public conveyance.	One hundred rupees.	

(*Chapter XXIV.—Penalties.—Clause 485.*)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
			4
Section 372, sub-section (*2*).	Carrying infected person, dead-bodies, etc., in other than special conveyance without permission.	One hundred rupees.	
Section 374, sub-section (*1*).	Direction to close or protection against attending market to prevent spread of infection.	Two hundred and fifty rupees.	Twenty-five rupees.
Section 375, sub-section (*1*).	Direction to close school or to exclude scholars from attendance to prevent spread of infection.	Two hundred and fifty rupees.	Twenty-five rupees.
Section 382, sub-section (*1*).	Direction to regulate operations in case of fire.	One hundred rupees.	
Section 384 ...	Prohibition of stacking or collecting hay, wood, etc., within certain limits.	One hundred rupees ...	Ten rupees.
Section 388, sub-section (*1*).	Selling in municipal market without permission.	Twenty-five rupees.	
Section 389, sub-section (*1*).	(*i*) Establishing new private market without sanction.	One thousand rupees.	
	(*ii*) Keeping open any private market or permitting any place to be used as a private market.	Two hundred rupees ...	Twenty-five rupees.
Section 390	Using as market a place which Magistrate has directed to be closed.	One hundred rupees ..	Twenty rupees
Section 392	Slaughtering animal at place other than a municipal or licensed slaughter-house.	Fifty rupees.	
Section 393	Requisition to pave, drain, etc., or otherwise improve private market or private slaughter-house.	Fifty rupees ...	Ten rupees.
Section 394, sub-sections (*1*) and (*2*).	Requisition on owner or occupier of private market to lay out, alter, etc., approaches, roads, etc., and to provide conveniences for, and maintain, the same.	Fifty rupees ...	Ten rupees.
Section 395, sub-section (*2*).	Requisition on tenant or agent to remove himself from market or slaughter house.	Fifty rupees ...	Ten rupees
Section 399, sub-section (*1*).	Using false or incorrect weight or measure or instrument for weighing.	Fifty rupees ...	Five rupees
Section 399, sub-section (*3*).	Failure to produce for inspection instruments for weighing, weights and measures.	Fifty rupees.	
Section 402, sub-section (*1*).	Carrying on trade of butcher or selling animals, meat or fish outside market without license.	One hundred rupees ...	Ten rupees.
Section 404, sub-section (*1*).	Carrying on trade of dairyman, baker, etc., or using any place for sale of milk, bread-stuffs, etc., without license.	One hundred rupees ...	Ten rupees.
Section 405, sub-section (*1*).	Sale, etc., of diseased living things or unwholesome article intended for human food.	Two hundred and fifty rupees for a first offence and one thousand rupees for any subsequent offence.	

(*Chapter XXIV.—Penalties.—Clause 485.*)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
Section 406	Prohibition of keeping bread-stuffs, etc., for sale except in properly covered receptacles.	Fifty rupees.	
Section 407	Selling drugs recognized in British Pharmacopœia in any place without license.	One hundred rupees	Twenty rupees.
Section 408, sub-section (*1*).	Compounding, mixing, etc., drug in a licensed shop or place without holding a certificate.	Fifty rupees.	
Section 408, sub-section (*2*).	Employing unauthorised person to compound, etc., drugs in licensed shop or place.	Two hundred rupees.	
Section 412, sub-section (*2*).	Removing, interfering or tampering with living thing, food, drug, etc., seized and left in custody.	Two hundred rupees.	
Section 418	Registration of place used as a burial or burning ground.	One hundred rupees.	
Section 419	Formation or using place as burial or burning ground without permission.	Five hundred rupees.	
Section 421, sub-section (*1*).	Burning or burying corpse except in a place provided for the purpose without permis-	One hundred rupees.	
Section 421, sub-section (*2*).	Exhuming corpse in certain cases without permission.	Five hundred rupees.	
Section 422 ...	Direction to close burial or burning ground injurious to health or offensive to neighbourhood.	Five hundred rupees	Fifty rupees.
Section 424, sub-section (*2*).	Disposal of dead bodies of persons dying from infectious disease.	One hundred rupees.	
Section 426, sub-section (*1*).	Selling fuel or other article for cremation without license.	Fifty rupees.	
Section 426, sub-section (*2*).	Selling articles for cremation at a higher rate than the rate fixed.	Fifty rupees.	
Section 430	Notice of death by medical officer in charge of hospital.	Fifty rupees.	
Section 436, sub-section (*2*).	Direction for removal of nuisance.	Five hundred rupees	Fifty rupees.
Section 446	Failure to surrender license ...	One hundred rupees	Ten rupees.
Section 449	Failure to attach token to dog's collar.	Ten rupees.	
Section 452	Production of license for inspection.	Fifty rupees	Ten rupees.
Section 459, sub-section (*5*).	Construction of private road without permission, etc.	Five hundred rupees	One hundred rupees.
Section 460	Requisition to re-construct, etc., a private road or bridge.	Five hundred rupees	One hundred rupees.

(*Chapter XXIV.—Penalties.—Clause 486.*)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
			4
Section 461	Requisition to provide and maintain or to enlarge waterway.	Two hundred and fifty rupees.	Fifty rupees.
Section 462	Construction, etc., of private road or bridge.	Two hundred and fifty rupees.	
Section 463	Requisition to close a public road.	Two hundred and fifty rupees.	Fifty rupees.
Section 464 ...	Requisition on owner to remove obstruction to public road or drain caused by fallen building, etc.	Fifty rupees ...	Ten rupees.
Section 465, clause (*b*)	Requisition to remove *debris* falling upon or into a private road or drain.	Fifty rupees	Ten rupees.
Section 467, sub-section (*4*).	Construction of private drain without permission, etc.	Two hundred and fifty rupees.	Fifty rupees.
Section 468 (*1*) ..	Requisition to re-construct, etc., private drain.	Two hundred and fifty rupees.	Fifty rupees.
Section 488 (*2*) ...	Requisition to provide, repair, etc., roof gutters, etc.	One hundred rupee	Ten rupees.
Section 469 ...	Requisition to provide a drain ...	Two hundred and fifty rupees.	Fifty rupees.
Section 471 ...	Requisition to take down a building, etc., where buildings, etc., threaten the stability of other immovable property.	Five hundred rupees ...	One hundred rupees.
Section 472 ...	Requisition to take down or secure buildings, etc., where hillside or bank threatens their safety.	Five hundred rupees	One hundred rupees.
Section 473 ...	Requisition to construct revetment, etc.	Five hundred rupees ...	One hundred rupees.
Section 477 ...	Revetment, turfing and sloping	Two hundred and fifty rupees.	Fifty rupees.
Section 478, sub-section (*1*).	Prohibition of occupation of unsafe building.	Two hundred and fifty rupees in the case of a masonry or framed building and fifty rupees in the case of a hut.	Fifty rupees in the case of a masonry or framed building and ten rupees in the case of a hut.
Section 478, sub-section (*2*).	Prohibition of occupation of insanitary building.	Fifty rupees ...	Ten rupees.
Section 499 ...	Obstructing Commissioners, Chairman, Vice-Chairman, etc., in making any entry, search, etc., or carrying on work under this Act.	Two hundred rupees for a first offence and five hundred rupees for a subsequent offence.	

(*Chapter XXIV.—Penalties.—Clauses 486—489.*)

Fine for unlawfully commencing, carrying on or completing building work.

486. If the erection of any new building— [Cf. C. M. Act, s. 493; Ben. Act III of 1884, ss. 267 and 271.]

(*a*) is commenced without obtaining the written permission of the Commissioners, or

(*b*) is carried on or completed otherwise than in accordance with the particulars on which such permission was based, or

(*c*) is carried on or completed in breach of any provision contained in this Act or in any rules or by-laws made thereunder, or of any direction or requisition lawfully given or made under this Act or such rules or by-laws, or

if any alteration of, or addition to, any building or any other work made or done for any purpose in, to or upon any building is commenced, carried on or completed in breach of section 312,

the owner of the building shall be liable to fine, which may extend in the case of a masonry building to five hundred rupees and in the case of a hut to fifty rupees, and to further fine, which may extend in the case of a masonry building to one hundred rupees and in the case of a hut to ten rupees for each day during which the offence is continued after the first day.

Penalty for obstructing contractor or removing mark.

487. Any person who, in contravention of section 525, obstructs or molests any person with whom the Corporation have entered into a contract, or, in contravention of section 526, removes any mark, shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months. [Cf. C. M. Act, s. 497.]

Power to impose penalties for breach of rules or by-laws.

488. In making any rule or by-law the Commissioners may, with the sanction of the Local Government, or in the case of any rule, model rule or by-law the Local Government may, direct that the breach thereof shall be punishable with a fine which may extend to fifty rupees, and, when the breach is a continuing one, with a further fine not exceeding five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence. [Cf. Ben. Act III of 1884, ss. 350 and 350B.]

Penalty on officers, etc., taking unauthorised fees.

489. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) shall accept or obtain, or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or dis-service to any person with the Commissioners or with any public servant or with the Government in the discharge of his official duties, he shall be punished with imprisonment, for a term which may extend to three years, or with a fine which may extend to five thousand rupees, or with both. [Cf. Ben. Act III of 1884, s. 366.]

CHAPTER XXV.

Procedure.

Rules and by-laws.

Previous publication of rules made by Government.

490. (*1*) The power of the Local Government to make rules under this Act is subject to the condition of the rules being made after previous publication.

[*Cf.* U. P. Act II of 1916, s. 300; Ben. Act III of 1884, s. 351.]

(*2*) Any rule made by the Local Government may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more than one municipality as the Local Government may direct.

Confirmation and previous publication of rules and by-laws made by the Commissioners.

491. (*1*) The power of the Commissioners to make rules under this Act shall be subject to the condition of such rules being made after previous publication and to their confirmation by the Local Government.

[*Cf.* Ben. Act III of 1884, ss. 351, 351A.]

(*2*) The power of the Commissioners to make by-laws under this Act shall be subject to the condition of such by-laws being made after previous publication and to their confirmation by the Local Government.

[*Cf.* U. P. Act II of 1916, s. 301.]

(*3*) Notwithstanding anything contained in sub-sections (*1*) and (*2*), where the Commissioners at a meeting adopt as a rule or by-law a model rule or by-law framed by the Local Government in regard to any matter for the regulation of which by rule or by-law provision is made in this Act, the confirmation of the Local Government shall not be required, but such adoption shall be subject to the approval of the Commissioner of the Division.

[*Cf.* B. & O. Act, 1922, as am by s. c. cl 354 (3).]

(*4*) The Local Government may, after previous publication of their intention, rescind any rule or by-law which they have confirmed, or any model rule or by-law adopted as aforesaid, and thereupon the rule or by-law shall cease to have effect.

[*Cf.* U. P. Act II of 1916 s. 301 (6).]

Publication of rules, by-laws, orders and notices.

Publication of rules, by-laws, orders and notices.

492. Every rule, by-law, order, public notice or other document directed to be published under this Act shall be written in, or translated into, Bengali, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct;

[*Cf.* Ben. Act III of 1884, s. 354.]

and a public proclamation shall be made throughout the municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

Signature and service of notices, etc.

Signature of notices, etc., may be stamped.

493. (*1*) Every license, written permission, notice, bill, summons or other document which is required by this Act or by any rule or by-law made thereunder to bear the signature of the Chairman, Vice-Chairman or any other municipal officer, shall be deemed to be properly signed if it bears a facsimile of the signature of the Chairman, Vice-Chairman or such municipal officer stamped thereupon.

[*Cf.* O. M. Act, s. 502.]

(*2*) Nothing in sub-section (*1*) shall be deemed to apply to a cheque drawn upon the Municipal Fund.

(*Chapter XXV.—Procedure.—Clauses 494—497.*)

Notices, etc., by whom to be served or issued.

494. All notices, bills, summonses and other documents required by this Act or by any rule or by-law made thereunder to be served upon, or issued to, any person, shall be so served or issued by municipal officers or servants or by other persons authorized by the Commissioners in this behalf. [*Cf.* C. M. Act, s. 503.]

Service how to be effected on owner or occupier of premises.

495. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to any person as owner or occupier of any land or building, it shall not be necessary to name the owner or occupier in the document and the service or issue thereof shall be effected— [*Cf.* C. M. Act, s. 504; Ben. Act III of 1884, s. 357.]

(*a*) by giving or tendering such document to the owner or occupier:

provided that if there be more than one owner or occupier, and it is not in the opinion of the Commissioners practicable to serve the document on every one of them the Commissioners may serve the document on any one or more of them as they may think fit;

(*b*) if the owner or occupier is not found, by giving or tendering such document or by sending it by post to any adult male member of the family, or to a servant in the employ, of the owner or occupier or of any one of the owners or occupiers; or

(*c*) if none of the means mentioned in clause (*a*) or clause (*b*) be available, by affixing such notice, bill, summons or other document on some conspicuous part of the land or building (if any) or other thing, to which the document relates.

Service how to be effected otherwise than on owner or occupier of premises.

496. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to any person otherwise than as owner or occupier of any land or building, such service or issue shall be effected— [*Cf.* C. M. Act, s. 505; Ben. Act III of 1884, 356.]

(*a*) by giving or tendering such document to such person; or

(*b*) if such person is not found, by leaving such document at his last known place of abode or business in the municipality or by giving or tendering the same or by sending it by post to any adult male member of his family or adult male servant in his employ; or

(*c*) if such person does not reside in the municipality and his address elsewhere is known to the Commissioners, by forwarding such document to him by post in a cover bearing the said address; or

(*d*) if none of the means referred to in clauses (*a*), (*b*) or (*c*) be available, by affixing such notice, bill, summons or other document on some conspicuous part of the land or building (if any) or other thing to which the document relates.

Powers of entry and inspection.

Power of entry to inspect, survey or execute work.

497. The Chairman, Vice-Chairman, Health Officer, Engineer or Sanitary Inspector, or any other person authorized by the Commissioners in this [*Cf.* Mad. Act V of 1920, s. 335; Ben. Act III of 1884, s. 351O.]

(*Chapter XXV.—Procedure.—Clause 498.*)

behalf, may enter into or on any building or land with or without assistants or workmen, in order to make any inquiry, inspection, test, examination, survey, measurement or valuation or for the purpose of lawfully placing or removing pipes or meters, or to execute any other work which is authorized by the provisions of this Act or of any rule, by-law or order made thereunder, or which it is necessary for any of the purposes of this Act or in pursuance of any of the said provisions, to make or execute:

Provided that—

(*a*) except when it is in this Act or in any rule or by-law made thereunder otherwise expressly provided, no such entry shall be made between sunset and sunrise;

(*b*) except when it otherwise expressly provided as aforesaid, no dwelling-house, and no part of a public building used as a dwelling-place, shall be so entered without the consent of the occupier thereof, unless the said occupier has received at least six hours' previous notice of the intention to make such entry;

(*c*) sufficient notice shall be given in every case even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to women to remove to some part of the premises where their privacy may be preserved;

(*d*) due regard shall be paid, so far as may be compatible with the exigencies of the purpose of the entry, to the social and religious usages of the occupants of the premises.

Power of entry on lands adjacent to works.

498. (*1*) The Commissioners, or any person authorized by them in this behalf, may, with or without assistants or workmen, enter on any land adjoining or within fifty yards of any work authorized by this Act or by any rule, by-law or order made thereunder, for the purpose of depositing on such land any soil, gravel, stone, or other materials, or of obtaining access to such work, or for any other purpose connected with the carrying on thereof. [*Cf.* Mad. Act V of 1920, s. 336.]

(*2*) The Commissioners or person authorized by them as aforesaid, shall, before entering on any land under sub-section (*1*), give the owner or occupier three days' previous notice of the intention to make such entry, and state the purpose thereof, and shall, if so required by the owner or occupier, fence off so much of the land as may be required for such purpose.

(*3*) The Commissioners shall not be bound to make any payment, tender or deposit before entering on any land under sub-section (*1*), but as little damage as may be shall be done and the Commissioners shall pay compensation to the owner or occupier of the land for such entry and for any temporary or permanent damage that may result therefrom.

(*Chapter XXV.—Procedure.—Clauses 499—502.*)

Prohibition of obstructing entry.

499. No person shall, in any way, obstruct the Commissioners, Chairman, Vice-Chairman, Health Officer, Sanitary Inspector or any municipal officer or servant, or any other person authorized by the Commissioners at a meeting or otherwise, in making any entry, inspection or search under this Act, or any person accompanying them at their request or acting under their orders for the purpose of such entry or acting under their orders in carrying out any work, under the provisions of this Act, or under any rule or by-law made thereunder for the carrying out of such work.

[Cf. C. M. Act, s. 509.]

Enforcement of requisitions.

Procedure when owners or occupiers required to execute works by Commissioners.

500. (*1*) Whenever it is provided in this Act or in any rule or by-law made thereunder that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers of any land or building, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served on every owner or occupier who is required to execute such work or to do such thing; but, if there is any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land or building, to execute such work or to do such thing within a specified time; and in such notification it shall not be necessary to name the owners and occupiers.

[Cf. Ben. Act III of 1884, s. 175.]

(*2*) Every requisition as aforesaid, other than a requisition under section 228 or section 229, or under the provisions of Chapter XXI shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition or to prefer an objection against such requisition as provided in section 501, the Commissioners will enter upon the land or building and cause the required work to be executed, or the required thing to be done; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

[Cf. Ben. Act III of 1884, s. 229.]

Objection by persons required to execute any work.

501. A person who is required by a requisition as provided in section 500 other than a requisition under section 228 or section 229, or under the provisions of Chapter XXI to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notification containing the requisition; or if the time within which he is required to comply with the requisition be less than five days, then within such less time.

[Cf. Ben. Act III of 1884, s. 176.]

Except as provided in section 502 such objection shall be heard and disposed of by the Chairman or Vice-Chairman.

Procedure if person objecting alleges that work will cost more than three hundred rupees.

502. If the objection alleges that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and disposed of by the Commissioners at a meeting; unless the Chairman or Vice-Chairman certifies that such cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman:

[Cf. Ben. Act III of 1884, s. 177.]

(Chapter XXV.—Procedure.—Clauses 503—505.)

Provided that in any case in which the Chairman or Vice-Chairman has certified his opinion as aforesaid, and the objection has in consequence thereof been heard and disposed of by the Chairman or Vice-Chairman, the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required; whereupon such person shall be relieved of all further liability and obligation, in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work or do such thing, and shall exercise all powers necessary therefor.

Orders after hearing objection.

503. The Chairman or Vice-Chairman or the Commissioners at a meeting, as the case may be, shall, after hearing the objection and making any inquiry which may be deemed necessary, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred; and, if such order does not withdraw the requisition, it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition. [Cf. Ben. Act III of 1884, s. 178.]

Order to be explained orally.

504. If the person making such objection is present at the office of the Commissioners, the said order shall be explained to him orally; and if such order cannot be so explained, notice of such order shall be served as provided in section 495 or section 496, as the case may be, on the person making the objection; and such explanation of, or service of, the notice of the said order shall be deemed to be a requisition duly made under this Act to execute the work or do the thing required. [Cf. Ben. Act III of 1884, s. 179.]

Power of Commissioners on failure of persons to execute work.

505. *(1)* If the person required to execute the work or to do the thing fails within the time specified in any requisition as aforesaid other than a requisition under section 228 or section 229, or a requisition under Chapter XXI to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners or any person authorized by them in this behalf, may, after giving forty-eight hours' notice of their intention by a notification to be posted up on or near the spot, enter upon the land or building and perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid to the Commissioners by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers, respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers. [Cf. Ben. Act III of 1884, s. 180.]

(2) The Commissioners may take any measure, execute any work or cause anything to be done under this section or under the provisions of Chapter XXI, whether or not the person who has failed to comply with the requisition is liable to punishment, or has been prosecuted or sentenced to any punishment, under this Act or under any rule or by-law made thereunder for such failure. [Cf. C. M. Act, s. 510 (3)]

(*Chapter XXV.—Procedure.—Clauses 506—510.*)

Apportionment of expenses among owners.

506. Whenever any expenses incurred by the Commissioners are to be paid by the owners or by the occupiers of any land or building as provided in section 505, the Commissioners may, if there be more than one owner or more than one occupier, as the case may be, apportion the said expenses among such of the owners or among such of the occupiers as are known in such manner as to the Commissioners may seem fit.

[*Cf.* Ben. Act III of 1884, s. 181.]

Apportionment among owners and occupiers.

507. Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land or building as provided in section 505, the Commissioners may apportion the said expenses among the said owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit.

[*Cf.* Ben. Act III of 1884, s. 182.]

Recovery by occupier of cost of works executed at his expense.

508. Whenever any works or any alterations and improvements of which the Commissioners are authorized by this Act to require the execution are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners, and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any court of competent jurisdiction.

[*Cf.* Ben. Act III of 1884, s. 183.]

Recovery of costs and expenses.

Recovery of moneys due to the Commissioners.

509. All costs, expenses, rents, tolls, fees or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 143 to 150 (both inclusive).

[*Cf.* Ben. Act III of 1884, ss. 335, 360.]

Power to sell unclaimed holdings for money due.

510. (*1*) If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase-money.

[*Cf.* Ben. Act III of 1884, s. 361.]

(*2*) After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of such Commissioners or in a court of competent jurisdiction.

(*3*) Any person may pay the amount due at any time before the completion of the sale, and may

(*Chapter XXV.—Procedure.—Clauses 511—514.*)

recover such amount by a suit in a court of competent jurisdiction from any person beneficially interested in such property.

Sale of materials.

511. (*1*) The materials of anything which shall have been pulled down or removed by the Commissioners under the provisions of sections 225, 348, 350, 437 or sub-section (*2*) of section 500, may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred. [*Cf.* Ben. Act III of 1884, s. 212.]

(*2*) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

Power to enter upon possession of houses repaired.

512. If the Commissioners have under the provisions of this Act caused any repairs to be made to any building or other structure, and if such building or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them. [*Cf.* Ben. Act III of 1884, s. 211.]

Damage to municipal property how made good.

513. If through any act, neglect or default, on account whereof any person shall have incurred any penalty imposed by or under this Act, any damage to the property of the Commissioners shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty, and the amount of damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is convicted, and on non-payment of such damage on demand the same shall be levied by distress, and such Magistrate shall issue his warrant accordingly. [*Cf.* Bom. Act III of 1901, s. 163.]

Relief to agents and trustees.

514. (*1*) Whenever any person, by reason of his— [*Cf.* C. M. Act, s. 519.]

(*a*) receiving the rent of immovable property as a receiver, agent or trustee, or

(*b*) being as a receiver, agent or trustee the person who would receive the rent if the property were let to a tenant,

would, under this Act or under any rule or by-law made thereunder, be bound to discharge any obligation imposed thereby on the owner of the property and for the discharge of which money is required, and such person has not in his hands funds belonging or payable to the owner sufficient for the purpose, he shall, within a reasonable time from the service upon him of any notice from the Commissioners in this behalf requiring him to discharge the said obligation, be bound to apply to a court of competent jurisdiction for leave to raise the necessary funds or for such other directions in relation thereto as the circumstances of the case may require.

(Chapter XXV.—Procedure.—Clauses 515—517.)

(2) Any receiver, agent or trustee who fails to apply to the court under sub-section (1) shall be deemed to be personally liable to discharge the said obligation.

Appeals.

Appeals from certain orders of the Commissioners.

515. (1) Any person aggrieved by any prohibition, notice or order, made by the Commissioners under the powers conferred upon them by section 5, sub-section (3) of section 128, section 164, sub-section (2) of section 206, sub-section (1) of section 207, sub-section (1) of section 217, clause (a) of sub-section (1) of section 228, sub-section (1) of section 229, clause (b) of sub-section (2) of section 239, clauses (ii) and (iii) of section 241, sub-section (1) of section 245, section 246, section 248, section 250, sub-section (1) of section 251, section 296, sub-section (2) of section 326, section 328, section 333, section 334, section 341, section 342, sub-section (1) of section 348, section 352, section 356, sub-section (2) of section 394, section 395, section 402, section 404, section 407, section 498, section 506 and section 507 may, within thirty days from the date of such prohibition, notice or order, appeal to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal. [Cf. Ben Act III of 1884, s. 242A.]

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) The order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final:

Provided that the prohibition, notice or order shall not be modified or set aside until the appellant and the Commissioners have had reasonable opportunity of being heard.

Prosecutions.

Power of Commissioners to direct prosecution for public nuisance, etc.

516. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act or rules or by-laws made thereunder and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the Municipal Fund. [Cf. Ben Act III of 1884, s. 352]

Sanction and limitation for prosecutions under this Act.

517. No prosecution for an offence under this Act or any rule or by-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within six months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman: [Cf. Ben. Act III of 1884, ss. 251A, and 353.]

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

(*Chapter XXV.—Procedure.—Clauses 518—520.*

518. (*1*) All police-officers shall give immediate information to the Commissioners of any offence committed against this Act or any rule or by-law made thereunder.

Police-officer to report offences and arrest persons refusing to give name and residence.

(*2*) When any person, in the presence of a police-officer, commits, or is accused of committing, any such offence, and refuses, on demand of a police-officer, to give his name and residence or gives a name or residence, which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required. [*Cf.* Ben. Act III of 1884, s. 365.]

(*3*) Upon the recommendation of the Commissioners any servant of the Commissioners in receipt of a salary of not less than ten rupees *per mensem*, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a police-officer under this section.

Suits.

Notice of suits against Commissioners.

519. (*1*) No suit or other legal proceeding shall be brought against the Commissioners of any municipality or any of their agents, officers or servants, or any person acting under their direction, for anything done under this Act or any rule or by-law made thereunder until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners and also (if the suit or proceeding is intended to be brought against any officer or servant of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit or proceeding is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit or proceeding; [*Cf.* Ben. Act III of 1884, s. 363.]

and unless such notice be proved, the court shall find for the defendant.

(*2*) Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

(*3*) If the Commissioners or their agent, officer or servant, or any person to whom any such notice is given, shall, before a suit or proceeding is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Contest of liability in civil courts.

520. (*1*) Any owner or occupier of land or of a building may contest his liability to pay any expenses or fees under sections 505 to 507 or may contest the amount which he has been called upon to pay in a civil court of competent jurisdiction: [*Cf.* Ben. Act III of 1884, ss. 184 and 185]

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 509.

(*2*) Where any damages or compensation other than compensation payable under section 89 are by this Act directed to be paid by the Commissioners the amount, and if necessary, the apportionment of the same, shall, in case of dispute, except as otherwise expressly provided in this Act, be ascertained and determined by a civil court of competent jurisdiction.

CHAPTER XXVI.

Savings.

Savings.

521. No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, rate, toll, charge, rent or fee, any person, property, thing or circumstance shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing or circumstance, or by reason of any mere clerical error or defect of form; and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax. [*Cf.* U. P. Act II of 1916, s. 165; Ben. Act III of 1884, ss. 316 and 358.]

Distress or sale not unlawful for want of form.

522. No distress or sale made under this Act shall be deemed unlawful nor shall any person making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceeding relating thereto, nor shall such person be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them, in any court of competent jurisdiction, subject to the provisions of section 519. [*Cf.* Ben Act III of 1884, s. 128.]

Who to be deemed owner or occupier where there are gradations of owners or occupiers

523. Whenever any right is conferred or duty imposed by or under this Act, or by any rule or by-law made thereunder, on the owner or occupier of any premises, and in consequence of there being gradations of owners or occupiers, doubt arises as to who is the owner or occupier entitled to exercise such right or bound to perform such duty, the Commissioners may, after due inquiry, determine from time to time which of such owners or occupiers shall be deemed to be so entitled or bound. [*Cf.* C. M. Act, s. 553.]

Commissioners, municipal officers, etc., to be deemed public servants.

524. Every Commissioner, every municipal officer and servant, every contractor or agent for the collection of any municipal rate or other tax, toll or fee and every servant or other person employed by any such contractor or agent, and every person authorized by the Chairman or the Commissioners at a meeting or otherwise to do any act under this Act or any rule or by-law made thereunder shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code; and in the definition of legal remuneration in section 161 of that Code, the word "Government" shall, for the purposes of this section, be deemed to include a body of Municipal Commissioners. [*Cf.* C. M. Act, s. 554.] XLV of 1860

Prohibition of obstruction of municipal contractors.

525. No person shall obstruct or molest any person (not being a person referred to in section 524) with whom the Commissioners have entered into a contract, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue of, or in consequence of, this Act or any rule or by-law made thereunder. [*Cf.* C. M. Act, s. 555.]

Prohibition of removal of mark.

526. No person shall without the permission of the Commissioners remove any boundary mark set up under the provisions of this Act or any mark set up for the purpose of indicating any level, measurement or direction necessary to the execution of works authorized by this Act or by any rule or by-law made thereunder. [*Cf.* C. M. Act, s. 556.]

(*Chapter XXVI.—Savings.—Clause 527.*)

Chaukidari chakaran lands

527. Notwithstanding anything contained in section 3 of the Village Chaukidari Act, 1870, the provisions of Part II of the said Act, relating to *chaukidari chakàran* lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a municipality, and all duties and functions which the *panchayat* of a village or any member thereof is required to discharge under the provisions of the said Part shall be discharged, and all powers which the *panchayat* of a village or any member thereof is authorized to exercise under the said Part shall be exercised by the Commissioners of such municipality, and the proceeds of the assessment on such lands made under the said Part shall be paid into the Municipal Fund: and shall be available for the purposes of such fund.

[*Cf.* Ben. Act III of 1884, s. 364.] Ben. Act VI of 1870.

CHAPTER XXVII.

Delegation of powers and control.

Delegation.

Delegation of powers by the Local Government.

528. The Local Government may, with regard to municipalities generally or to any municipality or class of municipalities and subject to such conditions or restrictions as they may deem fit to impose, by notification delegate to the Commissioner of the Division or to any other authority any of the powers vested in the Local Government by this Act, except any power to make rules and the powers conferred by sections 6, 8, 12, 14, 16, 63, 123, second proviso, 272, 532, 533, 534, 536 and 537.

[Cf. Ben Act III of 1884, s. 29A]

Control.

Supervision by Commissioner, District Magistrate, etc.

529. The Commissioner of the Division or the District Magistrate or the Magistrate in charge of a subdivision, when he is not a member of the municipality, may, within the limits of his division, district or subdivision, as the case may be,—

(a) inspect, or cause to be inspected, any immovable property used or occupied by the Commissioner or any work in progress under the direction of the Commissioners or of a joint committee ;

(b) by order in writing call for and inspect a book or document in the possession or under the control of the Commissioners or of such committee ;

(c) by order in writing require the Commissioners or such committee to furnish such statements, accounts, reports or copies of documents, relating to the proceedings or duties of the Commissioners or the committee, as he thinks fit to call for; and

(d) record in writing for the consideration of the Commissioners or of such committee, any observations he thinks proper in regard to the proceedings or duties of the Commissioners or the committee.

[Cf. U. P. Act II of 1916, s. 32; Ben. Act III of 1884, s. 62.]

Inspection of municipal works and institutions by Government officers.

530. A work, or institution, constructed or maintained, in whole or part, at the expense of the Commissioners and all registers, books, accounts or other documents relating thereto shall, at all times, be open to inspection by such officers as the Local Government may appoint in this behalf.

[Cf. U. P. Act II of 1916, s. 33.]

Right of certain officers to attend and speak at meetings.

531. The Chief Engineer, Public Health Department, the Director of Public Health or Deputy Director of Public Health, the Civil Surgeon of the district, the Executive Engineer, the Inspector of Schools, and any other officer specially authorized by the Local Government in this behalf shall be entitled to attend a meeting of the Commissioners and to address the Commissioners on any matter affecting their respective departments.

[Cf. U. P. Act II of 1916, s. 98.]

Power to suspend action under Act.

532. (1) It shall be the duty of the Local Government and of all Commissioners of Divisions and Magistrates of Districts to see that the proceedings of the Commissioners of any municipality are in conformity with law and with the rules in force thereunder.

[Cf. Ben. Act V of 1919, s. 51.]

(Chapter XXVII.—Delegation of powers and control.—Clauses 533, 534.)

(*2*) The Local Government may by order in writing annul any proceeding which they consider not to be in conformity with law and with the said rules and may do all things necessary to secure such conformity.

(*3*) The Commissioner of the Division or the District Magistrate may, by order in writing, suspend within the limits of the division or district (as the case may be) the execution of any resolution or order of the Commissioners, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act or any rule or by-law made thereunder, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons. [*Cf.* Ben. Act III of 1884, s. 63.]

(*4*) When the Commissioner of the Division or the District Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the Local Government, who may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as they think fit.

Powers of Local Government in case of default

533. (*1*) If at any time it appears to the Local Government, on the report of the District Magistrate or of the Commissioner of the Division, that the Commissioners have made default in performing any duty imposed on them by or under this or any other Act, the Local Government may, by an order in writing, fix a time for the performance of that duty. [*Cf.* Ben. Act III of 1884, s. 64.]

(*2*) If such duty is not performed within the period so fixed, the Local Government may appoint the District Magistrate to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the Municipal Fund.

Power of Local Government to supersede a department of a municipality

534. (*1*) If it appears to the Local Government that the Commissioners— [New]

(*i*) are not competent to perform ; or

(*ii*) persistently make default in the performance of the duties imposed on them by or under this Act or by any other law ; or

(*iii*) exceed or abuse their powers,

in respect of any department under their control, the Local Government may, by an order published, with the reasons for making it, in the *Calcutta Gazette*, appoint a suitable person to be in charge of the department for a period to be specified in the order who shall during such period exercise all the powers and perform all the duties of the Commissioners whether at a meeting or otherwise in respect of that department.

(*2*) The Local Government in making such order shall direct that the expense of performing the duties of the department together with such remuneration as the Local Government may allow from time to time to such person shall be paid within such time as they may fix from the Municipal Fund.

(*Chapter XXVII.—Delegation of powers and control.—Clauses 535—538.*)

(*3*) If any dispute arises as to whether any particular power or duty relates to the department made over to such officer the matter shall be referred to the District Magistrate, whose decision shall be final.

Power to District Magistrate to direct payment of expenses from Municipal Fund.

535. If the expense is not paid under sub-section (*2*) of section 533 or under sub-section (*2*) of section 534 the District Magistrate, with the previous sanction of the Local Government, may make an order directing the person having the custody of the balance of the Municipal Fund to pay the expense, or so much thereof as is from time to time payable from the balance, in priority to any other charges against the same. [*Cf.* Ben. Act III of 1884, s. 61(3).]

Power to dissolve body of Commissioners.

536. If, in the opinion of the Local Government the Commissioners are not competent to perform or persistently make default in the performance of, the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the Local Government may, by an order published, with the reasons for making it, in the *Calcutta Gazette*, direct that a fresh general election shall be held, and fresh appointments shall be made immediately of persons to be Commissioners; and from the date on which the results of such new election and appointment of Commissioners are published in accordance with the provisions of section 47 the former Commissioners shall, unless they are re-elected or re-appointed, vacate their offices: [*Cf.* Mad. Act V of 1920, s. 41.]

Provided that the tenure of office of the former Chairman shall continue until that office is vacated in the manner provided by section 55.

Power to supersede Commissioners in case of incompetency, default or abuse of powers

537. If, in the opinion of the Local Government, the Commissioners are not competent to perform, or persistently make default in the performance of the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the Local Government may, by an order published, with the reasons for making it, in the *Calcutta Gazette*, declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order. [*Cf.* Ben. Act III of 1884, s. 65.]

Consequence of supersession

538. (*1*) When an order of supersession has been passed under section 537, the following consequences shall ensue :— [*Cf.* Ben Act III of 1884, s. 66.]

(*a*) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners;

(*b*) all the powers and duties which may, under the provisions of this Act or any rule or by-law made thereunder, be exercised and performed by the Commissioners, whether at a meeting or otherwise, shall, during the period of supersession, be exercised and performed by such person or persons as the Local Government may direct ;

(*c*) all property vested in such Commissioners shall, during the period of supersession, vest in the Government.

(Chapter XXVII.—Delegation of powers and control. —Clauses 539—541.)

(*2*) On the expiration of the period of supersession specified in the order, the Commissioners shall be re-established by appointment and election, and the persons who vacated their offices under clause (*a*) of sub-section (*1*) shall not be deemed disqualified for appointment or election:

Provided that the Local Government may, for reasons to be recorded in writing, order that on the expiration of the said period of supersession the Commissioners shall be re-established by appointment only for such period as may be stated in the order, and the Commissioners who vacated their offices under clause (*a*) of sub-section (*1*) shall not be deemed disqualified for re-appointment.

Withdrawal of sections expressly extended by the Local Government.

539. Where specific provision is made in any section of this Act for its being extended by the Local Government to any municipality, the Local Government may, at any time, by order, withdraw any section they may thus have extended to any municipality from operation in such municipality, and such section shall cease to have effect in the said municipality from the date of such order.

Disputes.

540. (*1*) If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more municipalities constituted under this Act, or between the Commissioners of any such municipality and a District Board, or Cantonment Authority, the matter shall be referred— [*Cf.* Ben Act III of 1884, s. 66A.]

(*a*) to the District Magistrate, if the local authorities concerned are in the same district; or

(*b*) to the Commissioner or Commissioners of the Division or Divisions, if the local authorities concerned are in different districts; or

(*c*) to the Local Government, if the local authorities concerned are in different divisions and the Commissioners of those divisions cannot agree.

(*2*) The decision of the authority to which any dispute is referred under this section shall be final.

(*3*) If, in the case mentioned in clause (*a*), the District Magistrate is a member of one of the local authorities concerned, his powers under this section shall be discharged by the Commissioner of the Division.

Power to Local Government to make rules for the amendment of certain Schedules.

541. (*1*) The Local Government may by rules alter, add to or cancel any rule or parts thereof or may by notification alter, add, or cancel any entry contained in Schedules III, IV, VII, VIII and IX to this Act. [*Cf.* C. M. Act, s. 488.]

(*2*) All references in this Act to any Schedule which may be amended under sub-section (*1*) or under sub-section (*2*) of section 16, or sub-section (*4*) of section 112 shall be construed as references to such Schedule as for the time being amended.

(*Schedule I.—Enactments repealed.*)

SCHEDULE I.

ENACTMENTS REPEALED.

(*See* section 2.)

Part I.—Act of the Governor General in Council.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1897	V	The Amending Act, 1897	So much of Schedule II as relates to the Bengal Municipal Act, 1884.

Part II.—Bengal Acts.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1865	VII	The Bengal Municipal (Slaughter-houses and Meat-markets) Act, 1865.	The whole.
1884	III	The Bengal Municipal Act, 1884 ...	The whole.
1886	III	The Bengal Municipal (Amendment) Act, 1886	The whole.
1894	IV	The Bengal Municipal (Amendment) Act, 1894	The whole.
1896	II	The Bengal Municipal (Amendment) Act, 1896	The whole.
1900	I	The Darjeeling Municipal Act, 1900 ...	The whole.
1910	II	The Bengal Municipal (Amendment and Validation) Act, 1910.	The whole.
1914	II	The Bengal Municipal (Sanitary Officers) Act, 1914.	The whole.

SCHEDULE II.

(*See* section 16.)

Municipalities in which four-fifths of the total number of Commissioners shall be elected and the remaining one-fifth appointed by the Local Government.

Municipality.

Howrah,

Dacca,

SCHEDULE III.

(*See* sections 111, 156, 157, 159, 160 and 171.)

Tax on carriages, and on horses and other animals.

	Per half year. Rs.	A.
(1) On every 4-wheeled carriage propelled by mechanical power having more than four cylinders or having four cylinders with a bore of 80 millimetres or more	12	0
(2) On every 4-wheeled carriage propelled by mechanical power having more than four cylinders or having four cylinders with a bore of less than 80 millimetres	9	0
(3) On every bicycle, tricycle, side car or similar vehicle propelled by mechanical power not included in classes 1 and 2	4	0
(4) On every jin-rickshaw	2	0
(5) On every 4-wheeled carriage drawn by two horses	6	0
(6) On every 4-wheeled carriage drawn by one horse or a pair of ponies under thirteen hands	4	8
(7) On every 2-wheeled carriage ...	3	0
(8) On every horse	3	0
(9) On every pony under thirteen hands and on every mule and donkey ...	1	8
(10) On every elephant	9	0
(11) On every camel	4	0
(12) On every 4-wheeled carriage drawn by one pony under thirteen hands ...	3	0

SCHEDULE IV.

(*See* sections 111 and 203.)

Tax on trades, professions and callings.

Every license shall be granted under one or other of the classes mentioned in the second column of the following table and there shall be paid annually for the same a fee not exceeding the fee mentioned in that behalf in the third column of the table :—

1	2	3
Serial No.	Classes.	Maximum half-yearly tax in rupees.
		Rs.
1	Company transacting business within the municipality for profit or as a benefit society of which the paid-up capital is equivalent to—	
	(*a*) Rs. 10,00,000 and upwards ...	200
	(*b*) More than Rs. 5,00,000 but not more than Rs. 10,00,000.	100
	(*c*) More than Rs. 1,00,000 but not more than Rs. 5,00,000.	50
2	Merchant, banker, wholesale trader, owner or occupier of a market, bazar or theatre or place of public entertainment, broker or *dalal* in jute, cotton, precious stones, landed property, country produce, silk or other merchandise—	
	whose place of business is valued under this Act at not less than Rs. 50 per mensem.	50
3	Any person referred to in serial No. 2 whose place of business is valued under this Act at not less than Rs. 25 per mensem.	25
4	Commission agent, architect, engineer, contractor, medical practitioner, dentist, barrister, pleader—	
	(*a*) whose income exceeds Rs. 250 per mensem.	25
	(*b*) whose income is less than Rs. 250 per mensem.	12
5	Retail trader or shop-keeper, boarding house keeper, hotel-keeper, lodging-house keeper—	
	whose place of business is valued under this Act at not less than—	
	(*a*) Rs. 25 per mensem ...	12
	(*b*) Rs. 12 " " ...	4

SCHEDULE V.

(*See* section 112.)

Municipalities in which under the proviso to clause (a) of sub-section (1) of section 112 the rate on holdings may be fixed at fifteen per cent.

Municipality.

Howrah,
Dacca,
Darjeeling.

SCHEDULE VI.

(*See* sections 298, 299, 303, 304, 305, 307, 308, 312, 313, 314, 315 and 316.)

Rules as to the use of building-sites and the execution of building work.

Section A.—Building sites.

[Cf. C. M. Act, sch. XVII; Rules framed under Act V of 1920; Ben. Act III of 1884, ss. 283 and 241C.]

1. No piece of land shall be used as a building site unless the Chairman is satisfied—

(*a*) that the site is fit to be built upon from sanitary and engineering points of view;

(*b*) that it is well-drained or is capable of being well-drained, and that the owner will take the necessary steps to drain it; and

(*c*) that where the site is within thirty feet of a tank, the owner will take such measures as shall prevent any risk of the drainage from such building passing into the tank.

Section B.—Buildings generally (other than huts).

PART I.

2. Except with the written permission of the Chairman the foundation of buildings other than huts shall rest on natural ground.

3. The spread of the foundation shall be such that the pressure on the soil, taking into account the load on the floors and terrace roof (if any) shall not in any case exceed a maximum to be laid down by the Commissioners at a meeting with the approval of the Local Government.

4. The depths of the foundation shall be such as the Chairman may approve.

5. The plinth of every such building, except in the case of motor garages and coach houses, shall be at least one foot six inches above the level of the centre of the nearest street.

6. The plinth of stables and cowsheds shall be at least one foot above such level.

7. The walls of every such building shall be constructed upon proper footings.

8. The outer walls of every such building shall be constructed of brick or other substance of a hard and incombustible nature.

9. The walls of every such building shall be properly bonded.

10. If such building has more than one storey, every wall shall be of such thickness as the Chairman

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 11-20.

may consider necessary to ensure safety, regard being had to the height of the building, the materials of which it is constructed and the purpose for which it is intended to be put.

11. The floors of every such building shall be so constructed as to carry safely the maximum load, the allowance for live-load not being less than fifty-six pounds per square foot.

12. Every beam and girder in such building shall be supported by a breadth of brickwork, stone or other solid substance sufficient to secure stability.

13. The bearing of every beam or girder on a wall shall not, without the written permission of the Chairman, be less than three-fourths of the thickness of such wall.

14. No timber or woodwork in such a building shall be placed—

(*a*) in any wall or chimney-breast nearer than nine inches to the inside of any flue, stove-pipe or chimney-opening, and

(*b*) under any chimney-opening within 15 inches from the upper surface of the hearth thereof.

15. Every terraced roof shall be constructed to carry such load, not being less than forty pounds per square foot, in addition to its own weight as may be approved by the Chairman.

PART II.

16. The lowest floor of every building erected or re-constructed from the ground level shall be constructed at such a level as shall permit of such building being effectually drained and of the drainage being led into an existing or proposed public drain.

17. No building shall be erected or raised to a greater height than sixty feet measured from the level of the centre of the street in front—

(*a*) in the case of a pitched roof, up to the tie-beam of the roof, and

(*b*) in the case of a flat roof, up to the surface of the roof.

18. In the case of a pitched roof, the roof above that height shall rise at an angle of not more than forty-five degrees.

19. In the case of a flat roof, no parapet shall be constructed more than three feet above the maximum height specified in rule 17.

20. If the width of the street does not exceed twenty-six feet, such building shall not be erected or raised to a height greater than one and a half times the width of such street.

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 21-29.

21. If the width of the street exceeds twenty-six feet, but does not exceed forty feet, such building shall not be erected or raised to a height greater than forty feet.

22. If the width of the street exceeds forty feet, such building shall not be erected or raised to a height greater than the width of such streets.

23. Where such building abuts upon more than one street, its height shall be regulated by the wider of such streets so far as it abuts upon such wider street, and also to a distance of eighty feet from such wider street so far as it abuts upon the narrower of such streets.

24. If the face of such building is set back from the street at any height not exceeding the height specified in rule 17, such building may be erected or raised to a height greater than that so specified, but not so that any portion of such building shall intersect any of a series of imaginary straight lines drawn from the line of set-back, in the direction of the portion set-back, at an angle of forty-five degrees with the horizontal.

25. Notwithstanding anything contained in the foregoing rules any house which has been demolished may, within a period of two years, from the date of its demolition, be re-erected to a height not exceeding its original height, provided that the onus of proving the height of the original building prior to demolition shall lie upon the person applying for sanction to re-build.

26. Every interior courtyard shall be raised at least one foot above the level of the centre of the nearest street, so as to admit of easy drainage into such street.

27. Every house, if this in the opinion of the Chairman practicable, shall be provided with a secondary means of egress in case of fire.

With respect of roofs, floors and staircases.

28. The flat and roof of such building, and every turret, dormer, lantern-light, skylight, or other erection placed on the flat or roof of such building, shall be externally covered with slates, tiles, metal, or other incombustible materials, except as regards any door, door-frame, window or window-frame of any such turret, dormer, lantern-light, skylight, or other erection.

29. In every new public building, the floor of every lobby, corridor, passage and landing which is not intended solely as a means of access to any private apartment, and all the supports of every such floor shall be constructed of stone or other incombustible or fire-resisting materials, and shall be of adequate strength.

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 30-37.

30. Every staircase in a new building shall be properly constructed of sound and suitable materials, and securely fixed and shall be of adequate strength.

31. In every new public building every staircase which is not intended solely as a means of access to any private apartment shall be constructed of incombustible materials, and carried by supports of incombustible materials, and shall be furnished on each side with a sufficient hand-rail, properly and securely fixed.

32. In every new public building every staircase which is intended solely as a means of access to any private apartments shall be provided with a sufficient hand-rail properly and securely fixed.

33. In every new building containing separate sets of chambers or offices or rooms constructed or intended or adapted to be tenanted by different persons, and which shall exceed fifty thousand feet in cubic content, the floor or every lobby, corridor, passage and landing and every flight of stairs in any staircase in such building, and all the supports of every such floor and flight of stairs shall be constructed of stone or other fire-resisting material, and shall be of adequate strength and the principal staircase and landings of such building shall be enclosed with walls, not less than nine inches in thickness, constructed of good, hard, sound, well-burnt bricks, stone, or other hard and incombustible materials, properly bonded and solidly put together.

Section C.—Dwelling-houses and other domestic buildings (other than huts).

34. The total area covered by all the buildings on any site used for a dwelling-house shall not exceed two-thirds of the total area of the site, and the area so covered shall form part of the site, and no building or part of a building shall be erected so as to encroach upon the area so left vacant:

35. There shall be at the back of every domestic building an open space—

(*a*) extending along the entire width of the building;

(*b*) exclusively belonging to such building;

(*c*) free from any erection thereon above the level of the ground, except a water-closet, earth-closet, or ash-pit; and

(*d*) not less than ten feet in width from every part of the back of such building to the opposite boundary of the premises.

36. If the height of such building be not less than thirty feet, the width of such open space shall not be less than fifteen feet, and if such height exceed forty-five feet the width shall not be less than twenty-five feet.

37. This rule shall not apply where the back of a building abuts on a public square or street or a place dedicated to public use and not likely to be built upon

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 38-41.

not less than six feet in width, but in such cases, the height of the building shall nevertheless, in accordance with the provisions of rules 17 to 25 be regulated by the width of the public square, street or place on which it abuts.

38. For the purposes of this rule, the back of a building shall be deemed to be that face of the building which is furthest from any street at the side of which the building is situated:

Provided that, where a building is situated at the side of more than one street, the back of the building shall, unless the Chairman otherwise direct, be deemed to be that face of the building which is furthest from the widest of such streets.

39. If any person desires to erect a domestic building upon a site which is irregular or is of such a nature that it is impracticable to provide an open space in the rear of the building of the dimensions prescribed by rule 35 or rule 36, the Chairman may relax the provisions of those rules:

Provided that—

(*a*) such open space shall be left as the Chairman may consider practicable, having regard to all the circumstances of the case, and

(*b*) not more than two-thirds of the total area of the site shall be occupied by buildings.

40. (*1*) If either side of a domestic building is not attached to the adjacent building, and if such side does not abut on a public square or street which is not less than six feet in width,

there shall be between the buildings an open space extending along the entire length of such side and forming part of the side of the said domestic building:

Provided that attachment of any building to the adjacent building shall not be allowed (except with the permission of the Chairman) if either of the buildings is a dwelling-house.

(*2*) The minimum distance across such space from every part of the said domestic building to the boundary line of the land or building immediately opposite such part shall be—

(*a*) six feet, if there is a building next to such boundary line or within two feet of it, or

(*b*) four feet, if there is an open space of two feet or more on either side of such boundary line:

Provided that, where there is a public street which is less than six feet wide by the side of the site, the owner may, by giving to the Commissioners free of charge such land as will make the street six feet wide, be exempted from leaving further side space under this rule.

41. Every room used or intended to be used for purposes of human habitation—

(*a*) shall be in every part not less than nine feet in height, measured from the floor to the under-side of the beam on which the roof rests;

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 42-45.

(*b*) shall have a superficial area of not less than eighty square feet; and

(*c*) shall be provided, for purposes of ventilation, with doors or windows opening directly into the external air or into an open verandah.

42. (*1*) Every building used or intended to be used for purposes of human habitation shall be so constructed that every room therein shall have at least one side abutting for the whole of its length (which shall, in no case, be less than eight feet) on an open space, either external or internal. The internal open space shall, in no case, be less than eight feet across in any direction. The external open space shall, in no case, be less than eight feet across in any direction, except when such open space abuts for the whole of its length on a street or other public space which is not less than fifteen feet across in any direction.

(*2*) A building shall not be held to contravene sub-rule (*1*) of this rule if one side of a room abuts on an internal or external verandah, provided that the verandah in its turn abuts for the whole of its length on an open space and that the width of such open space (not being less than eight feet) is double the width of the verandah.

(*3*) Every open space, external or internal, required by sub-rule (*1*) of this rule, shall be free and shall be kept free, from any erection thereon and shall be open to the sky.

(*4*) The side of every such room abutting on an external or internal open space or an external or internal verandah shall have at least one-fifth of its area occupied by doors, windows or ventilators, but, in no case, shall the area so occupied be less than twenty-four square feet. Where, in the opinion of the Chairman, it shall be considered necessary, additional ventilators of a type approved by the Chairman shall be provided in the remaining sides of such room. Such ventilators shall communicate directly with the open air.

Section D.—Applications for approval of sites for, and for permission to construct or reconstruct, buildings other than huts.

43. Every application for approval of a site for a building and for permission to execute the work of constructing or reconstructing such building shall be submitted in the form given in Form A attached to these rules (to be supplied by the Chairman free of charge).

44. Every such application shall be accompanied by a site-plan in duplicate drawn to a scale of not less than one-fiftieth of an inch to a foot.

45. Every such site-plan shall show—

(*a*) the boundaries of the site and of any contiguous land belonging to the owner thereof,

(*b*) the position of the site in relation to neighbouring streets,

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 46-48.

(*c*) the name of the street in which it is proposed to erect the building,

(*d*) the position of the building, and of all other buildings (if any), which the applicant intends to erect upon his contiguous land referred to in *Clause* (*a*), in relation to—

(*i*) the boundaries of the site, and in a case where the site has been partitioned the boundaries of the portion owned by the applicant and also the portions owned by the other owners, and

(*ii*) all adjacent streets, buildings and premises within a distance of forty feet of the site and of the contiguous land (if any), referred to in clause (*a*),

(*e*) the means of access from the street to the building, and to all other buildings (if any), which the applicant intends to erect upon his contiguous land referred to in clause (*a*),

(*f*) the position and approximate height and the number of stories of all other buildings within forty feet of the site,

(*g*) the position and dimensions of proposed kitchens, staircases, urinals, drains, cess-pools, stables, cattle-sheds, cow-houses wells and other appurtenances of the building,

(*h*) the free passage or way in front of the building,

(*i*) the space to be left about the building to secure a free circulation of air, admission of light, and access for scavenging purposes,

(*j*) the width of the street (if any) in front, and of the street (if any) at the rear of the building, and

(*k*) such other particulars as may be required by the Commissioners.

46. Every application to construct or re-construct a building shall also be accompanied by a plan in duplicate of the proposed building showing both elevations and sections properly coloured and neatly and accurately drawn to a scale of not less than one-eighth of an inch to a foot.

47. Every such plan shall show—

(*a*) the depth and width of the foundations of the building,

(*b*) the level of the lowest floor of the building, and

(*c*) the level of all courtyards and open spaces in the building or premises and the plinth level of buildings with reference to the level of the centre of the nearest street.

48. Every such application shall further be accompanied by a specification giving the following information—

(*a*) the materials and method of construction to be used for external walls, party walls, foundations, roofs, floors, fire-places and chimneys;

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 49-55.

(*b*) the manner in which roof and house drainage and the surface drainage of the site will be disposed of;

(*c*) the manner, if any, in which it is proposed to pave the courtyard and open spaces in the building or premises and the slope to which the surface is to be made in each case;

(*d*) the means of access that will be available to scavengers for the cleansing of privies;

(*e*) the purpose for which it is intended to use the building;

(*f*) the means of ingress and egress, if the building is intended to be used as a dwelling-house for two or more families or as a place for carrying on any trade or business in which more than twenty people may be employed or as a place of public resort; and

(*g*) such other particulars as may be required by the Commissioners.

49. The plans shall be signed by the applicant.

50. All information and documents which it may be found necessary to require, and all objections which it may be found necessary to make, before deciding whether a site should be approved for a building, or whether permission to construct or re-construct a building should be given, shall be required and made in one requisition and the applicant shall be apprised thereof at the earliest possible date.

51. Within fifteen working days from the date of receipt of an application under section 303, the Chairman may require the applicant—

(*a*) to furnish him with any information on matters referred to in these rules which has not already been given in the documents thereunder, or

(*b*) to satisfy him that there are no objections which may lawfully be taken to the approval of the site.

52. If any information or document required under rules 50 and 51 is, in the opinion of the Chairman, incomplete or defective, he may, within fifteen working days from the date of receipt of the same, require further information or documents to be furnished.

53. If any requisition made under rules 51 and 52 is not complied with within three months, the application under section 303 shall be refused.

54. When the Chairman has approved any site-plan or given permission to execute any work, he shall sign such site-plan of the work, as the case may be.

55. One copy of the site-plans and one copy of the building plans shall be kept at the site of the building at all times when building operations are in

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 56-64.

progress, and such plans shall be available at all such times for the inspection of the Chairman or of any officer authorized by him in that behalf.

Section E.—Huts generally.

56. Except with the written permission of the Chairman, no portion of a hut shall be placed within six feet of a masonry or wooden building; provided that this rule shall not preclude the construction of huts in compounds, in any case, where masonry or wooden out-houses would be permissible.

57. No hut shall be of more than two storeys nor exceed twenty feet in height, measured from the top of the plinth to the junction of the eaves and wall.

58. The plinth of a hut shall be raised at least one foot above the level of the centre of the nearest street or passage.

Section F.—Huts on land exclusively set apart for the same.

59. Huts on land exclusively set apart for the same shall be built in continuous lines, in accordance with alignments to be prescribed by the Commissioners.

60. Where an alignment prescribed under rule 59 does not correspond with the alignment of a street, a passage of at least twenty feet, measured from eave to eave, shall be left between the rows of huts abutting on such prescribed alignment.

61. All passages referred to in rule 60 shall remain private property, subject to a right in the municipal authorities to send carts along them or otherwise make use of them for any of the purposes of this Act.

62. Notwithstanding anything contained in rule 59 huts may, with the general sanction of the Commissioners, be built so as to form an open courtyard, comprising at least one-fourth of the whole area occupied by the huts and courtyard, where the huts are of only one storey and at least one-third of such whole area where there are one or more two-storied huts on more than one side of the courtyard.

63. There shall be between any two huts a space of at least three feet, measured from eave to eave.

Section G.—Applications for permission to construct or re-construct huts.

64. Every application for permission to construct or re-constuct a hut shall be submitted in the form given in Form B attached to these rules (to be supplied by the Chairman free of charge).

Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 65-69.

65. If it is intended to use the hut or part thereof for any of the purposes specified in section 354 of the Act or as a stable, cattle-shed or cow-house, the fact shall be expressly stated in such application.

66. Every such application shall be accompanied by a site-plan showing the hut, the means of access thereto from the street, and such other particulars as may be required by the Commissioners.

67. The Chairman may require the applicant

(*a*) to furnish him with any information which has not already been given, or

(*b*) to satisfy him that there are no objections which may lawfully be taken to the grant of permission to execute the work.

68. If any information or plan required under rule 66 or rule 67 is, in the opinion of the Chairman, incomplete or defective, he may require further information or a fresh plan to be furnished.

69. If any requisition made under rule 67 or rule 68 is not complied with within two months, the application received under section 303 shall be refused.

SCHEDULE VII.

(*See* sections 456, 459 and 462.)

Rules for the construction, etc., of private roads and bridges.

Part I.—Roads.

Applications for permission to construct, re-construct or alter a private road.

1. (*1*) Every application for permission to construct, re-construct or alter a private road other than a footpath must be accompanied by—

(*a*) a plan of the road, showing cross-sections,

(*b*) type-drawings of all bridges to be provided or already provided for the road, and

(*c*) a description of the provision which it is intended to make or which already exists in respect of retaining-walls and revetments (if any) and drainage.

(*2*) Every application for permission to construct, re-construct or alter a private footpath must be accompanied by a full description of the path.

Slope.

2. (*1*) A private road must be so constructed as to have a slope inwards towards the hillside.

(*2*) Such slope must be not less than the gradient of the road.

Retaining-walls and revetments.

3. (*1*) Whenever the Commissioners so direct, the outer edge of a private road must be protected by retaining-walls, and the inner cutting by revetments.

(*2*) Such walls and revetments must be of such number and must be placed in such positions as the Commissioners may direct, and must be constructed in accordance with the rules contained in Schedule IX.

Drain.

4. A stone-lined drain must be provided on the inner side of a private road, where such side is not rock.

Part II.—Bridges.

Application for permission to construct, re-construct or alter a private bridge.

5. Every application for permission to construct, re-construct or alter a private bridge must be accompanied by drawings of the bridge.

Waterway.

6. A private bridge must be constructed so as to leave sufficient waterway to pass the *maximum* discharge of the channel spanned by the bridge.

Slope of flooring under bridge.

7. The flooring placed in the bed of the channel under a private bridge must, as far as practicable, be laid at the same slope as that of the channel.

Pocket above bridge.

8. When a pocket for the deposit of *debris* is cut in the hillside above a private bridge, otherwise than in solid rock, such pocket must be lined with masonry walling.

Substitution of gratings for culverts.

9. When a small drain is crossed by a private road, a wooden or iron grating must, if the Commissioners so direct, be laid over the drain, instead of a covered culvert.

SCHEDULE VIII.

(*See* section 467.)

Rules for the construction, etc., of private drains.

Construction of drains for sullage water

1. Drains for sullage water shall be constructed with half or one-third glazed earthenware tile inverts and cement sides.

Construction of drains for surface water

2. (*1*) Drains for surface water only may be constructed either of dry rubble masonry or of any other material approved by the Commissioners, and may be either rectangular or U-shaped or V-shaped in section.

(*2*) Such drains shall not be connected with any drain carrying sullage water or sewage.

Drains to be open.

3. Except with the written permission of the Commissioners no covered drain shall be constructed and no open drain shall be covered in.

Sectional area.

4. The sectional area of every drain shall be subject to the approval of the Commissioners.

Discharge.

5. (*1*) Drains must discharge into the nearest water-channel or public drain, unless in any case the Commissioners otherwise direct.

(*2*) The outfall of a drain into a water-channel or public drain must be protected and guided in such manner as the Commissioners may direct.

(*3*) Where the drain of a private road joins the drain of a public road, the former drain must be so directed or so protected by strike-boards as to minimize the risk of damage to the public drain or road.

Drain round masonry or framed building.

6. A masonry drain must be placed round every masonry or framed building or block of such buildings, and the site must be sloped from all sides towards such drain.

SCHEDULE IX.

(*See* section 477.)

Rules as to revetting, turfing and sloping.

Part I.—Revetments, Retaining-walls and Toe-walls.

Foundation and bed-line.

1. (*1*) The foundation of every revetment, retaining-wall or toe-wall must be taken down to original and firm soil or rock; and the bed-line must be cut at right angles with the face of the revetment or wall.

(*2*) The building of any revetment, retaining-wall or toe-wall shall not be commenced until the foundation and bed-line have been inspected and approved by the Commissioners.

Materials.

2. (*1*) A revetment, retaining-wall or toe-wall may be made of dry rubble masonry, but must, in any case in which the Commissioners so direct, be made of lime masonry.

(*2*) No stone used shall be of greater height than its length or breadth.

Laying of stones.

3. All stones used must be laid on their natural beds, and must be arranged so as to break joint as far as may be possible.

Bonding.

4. (*1*) One through bonding-stone or line of bonding-stones must be inserted at intervals of five feet in each course, and at points intermediate between the corresponding bonding-stones of the course below.

(*2*) Any of the bonding-stones which do not extend right through the wall must overlap each other for one-third of their length.

Solidity.

5. Every revetment, retaining-wall or toe-wall must be built up solid to full section; and spawls or chips shall not be used for filling the courses unless their use is unavoidable.

Weep-holes.

6. Weep-holes must be provided at intervals of four feet horizontally and four feet vertically, beginning with the course immediately above ground level.

Sections.

7. (*1*) Where a revetment, retaining-wall or toe-wall does not exceed twenty feet in height and is not surcharged, the mean thickness of the revetment or wall above the footings shall not be less than one-third of the vertical height of the revetment or wall, measured from the top of the footings:

Provided that the width at the top shall in no case be less than one foot six inches and need not in any case exceed three feet six inches.

(*2*) Where a revetment, retaining-wall or toe-wall does not exceed twenty feet in height and is surcharged, sub-rule (*1*) shall apply, the height being assumed for the purposes of that sub-rule to be one-and-a-half times the vertical height.

(*3*) Where a revetment or retaining-wall exceeds twenty feet in height, detailed designs must be submitted to the Commissioners, and the sections must be such as the Commissioners may approve.

Part II.—Sloping.

Angle.

8. When, in pursuance of any requisition or direction made or given by the Commissioners, any slope is to be reduced, the angle to which the slope is reduced shall not be greater than 37°.

STATEMENT OF OBJECTS AND REASONS.

INTRODUCTORY.

The Bengal Municipal Act (III of 1884) has been in force for nearly 40 years, and though still wide enough in its scope to meet the needs of many towns in Bengal, the Act naturally fails to reflect or provide for several new developments in municipal administration which merit the attention of even petty municipalities. It is true that there is a wide gulf between the needs and still more the resources of small communities, such as Rajpur, Taki or Baduria and of urban areas such as Howrah, Darjeeling or Dacca and the elaborate provisions, which the latter require, may appear incongruous with the realities of many semi-rural municipalities. The Decentralization Commission indeed proposed that "a number of petty municipalities which will not be fit to exercise the large powers" suggested for municipalities in general might be placed under local committees styled town panchayets (as distinguished from village boards or unions) and be "administered as embryonic municipalities, subject to such portions of the provincial Municipal Acts as the Local Government may, in each case, see fit to extend to them".

There is, however, in Bengal a widespread reluctance to surrender the form of municipal government where it already exists, and after careful consideration Government are of opinion that no harm is likely to ensue—whether by abuse of powers or through inability to adapt to semi-rural conditions a too elaborate machinery—if a modern Municipal Act is placed in operation in all areas which at present enjoy a municipal constitution.

The gradual elaboration of the Village Self-Government Act will enable it to meet the needs of growing non-municipal villages for some years to come, while the present Bill restricts the operation of certain provisions to more advanced municipalities notified in this behalf and enables (clause 12) the Local Government to except a municipality or a part of it from the operation of any other provisions which appear unsuited to the circumstances of such municipality.

The somewhat inconvenient arrangement of the present Act, whereby the provisions regarding the constitution, procedure and various simple measures of sanitation and improvement apply to all municipalities, while other parts containing important administrative provisions apply when expressly extended, had its basis in the existence of the four diverse types or rather grades of municipalities which in 1876 were first brought within the scope of a single Act.

Under the present Bill, the main body of the municipal law will automatically apply *proprio vigore* to all municipalities, and it is merely the elaborate provisions regarding streets and buildings which require to be expressly extended. This method of treatment enables the draftsman to deal in one chapter with each important phase of municipal administration. By the insertion of a special chapter containing those provisions which the special conditions of hill municipalities render necessary, it is possible to repeal the Darjeeling Act (I of 1900) and to avoid the inconvenient interleaving of provisions peculiar to Darjeeling with other clauses of the Bill.

The case for amendment.

The Local Government in 1905 addressed the Government of India on the subject of the amendment of Act III of 1884. Their proposals for the most part aimed at removing legal difficulties and ambiguities and perfecting the working of existing provisions by the addition of new clauses which experience had shown to be necessary. Other proposals were designed to improve the constitution of appellate committees, to delegate to Divisional Commissioners certain powers now vested in the Local Government, to empower riverside municipalities to regulate the traffic of boats within municipal limits, to authorize the levy of a tax on dogs and rickshaws, to legalize an increase in the rate on holdings for the purpose of guaranteeing

interest on capital expended on the construction of light railways or tramways, to justify the expenditure of municipal funds on the construction and maintenance of hostels and finally to introduce a trades and professions tax.

It will be seen that these proposals for the most part do not raise issues of the first importance. They received the general approval of the Government of India, which, however, referred to the defective character of the Bengal Municipal Act, and suggested that it was preferable "to re-enact the Act as a whole on more modern lines". The Legislative Department (Bengal) strongly supported this suggestion, pointing out that the Act was loosely drawn, that it had been extensively amended by Acts IV of 1894 and II of 1896, slightly amended by Act III of 1886 and Act V of 1897, and partially repealed in six other Acts. It was urged that a consolidating Bill instead of an amending Bill should be prepared. This contention has much greater weight in present times.

Two forces have been at work. In the first place, the range of municipal activities in all parts of the world has vastly expanded; secondly, and as a corollary, the more precise devolution of functions and powers from the State to local bodies has become essential.

In India, Government, in accordance with the changing times, have already increased the independence of local bodies by the abolition of official Chairmen, by giving municipalities a free hand in respect of their budgets and generally by the relaxation of internal control. But it is only by liberally supplementing the present law that the new conception of municipal administration—the improvement of insanitary buildings and areas, the prevention of epidemic disease, the control of the sale of food-stuffs, the improved registration of vital statistics, child-welfare, etc.,—can find a place in the municipal administration of mufassal Bengal.

Main features of the Bill.

(a) Constitution of municipalities, franchise, etc.

Schedules I and II of the present Act, providing for the appointing by Government of all the Commissioners and of the Chairman, are abolished and the proportion of elected Commissioners—two-thirds of the whole body of Commissioners in the old Act—is increased in the case of the average municipality to three-fourths, while in certain advanced municipalities, named in a schedule of the Bill, the elected proportion is raised to four-fifths.

In view of the administrative difficulties which frequently arise in the formation of a new municipality, Government retain power in such cases to nominate all the Commissioners for a period not exceeding one year.

To safeguard the rights of minorities under this wide extension of the elective system, Government take power to alter the number of Commissioners to provide specially by rule for the representation of minorities, especially Muhammadans, and in the case of industrial areas to increase the number of nominated Commissioners or to provide for the proper representation of the industry and of other inhabitants not directly connected with the industry by special electoral constituencies in each case.

Power has been taken to widen the franchise by enabling the Local Government at any time to fix and modify the minimum amount of rates and taxes, the payment of which will qualify for a vote.

Members of joint families who hold in severalty property on which they pay rates or taxes in their own name will enjoy a personal vote in addition to the vote which they share jointly with other members of the family and exercise through a selected representative.

Provision has been made against the commission of corrupt practices or the using of undue influence, and a special procedure is prescribed for the prompt disposal of election disputes.

The provisions regulating the election of a Chairman, the tenure of his office and that of the Vice-Chairman and Commissioners are more precise and detailed than those of the present Act, with the object of preventing such irregularities as now occur.

Commissioners before assuming office are required to make an oath or affirmation of allegiance to the Crown ; the oath will not bar any person from attempting by constitutional means to obtain changes in the established order.

Statutory recognition is given to the formation of standing committees. With an extension of the committee system on these lines, it has been considered unnecessary to retain any provision for ward committees which moreover have not hitherto been formed in many municipalities.

(b) Control by Government.

(*Chapter XXVII*).—By increasing the elective element in municipal boards, Government have abandoned its old system of "internal control". The popular voice is thereby given greater freedom in the direction of policy and the details of administration. At the same time, a very large extension of powers over the property and personal rights of the rate-payers is given to the popular representatives. The function of the State is to secure the proper exercise of discretion by the Commissioners without undue interference with the principle of local autonomy, and this can only be effected by vesting Government with adequate powers of "external control".

Section 64 of the present Act provides, in the event of specific default on the part of the Commissioners, for Government appointing the Magistrate to perform at the cost of the municipal fund that duty in which default has been made.

Where there is persistent default, Government may under section 65 of the present Act take the extreme step of superseding the Commissioners.

These powers are retained in the Bill (clauses 533 and 537). Experience has, however, shown that it is rather in respect of the management of a particular department than of general administration that the intervention of Government is required and power is therefore taken under clause 534 to place such a department temporarily under Government control instead of having resort to the drastic measure of supersession.

It has again been found that serious defects from time to time occur in the management and maintenance of the three primary services of an urban community, viz., drainage or sewerage works, lighting and water-works. At present Government can only intervene with the bludgeon of supersession, and it has been considered desirable to take powers (clause 272) to bring important works of this kind under Government control, when the Commissioners—after the fullest enquiry—have been adjudged negligent or inefficient in this part of their duties.

Again clause 536 provides a new and alternative method of intervention, by empowering the Local Government where default, mismanagement or abuse of power is proved, to dissolve the municipal board instead of superseding or suspending its constitution.

The electors are thereby given the opportunity of pronouncing judgment on the outgoing Commissioners ; if their verdict is unfavourable, a new board will come into power to rectify the errors of its predecessors; if, on the other hand, the electors desire to dissociate themselves from the action of Government, they may by re-election pass a vote of confidence in the board, which has been dissolved.

(c) Municipal finance and taxation.

As already pointed out, the scope or range of municipal action has in recent years been widened and clause 96 enumerates several objects on which the municipal funds may be expended and is rendered elastic by a provision enabling the Commissioners, with the sanction of Government, to add to such objects or purposes from time to time.

It is first proposed to abolish the existing tax on persons. That tax is difficult to assess, and gives rise to widespread complaints of unfair incidence. The rate on holdings is a far more scientific and satisfactory form of taxation, and it is desirable that it should be adopted throughout.

The allocation of separate funds (water or lighting funds, etc.) to the specific purposes for which they are raised, is maintained, but it is not always practicable to make or keep these funds self-supporting or exactly equal to the expenditure they are required to meet.

In practice, the special funds are frequently supplemented from the general fund. The Bill (clause 116) permits the levy of a consolidated rate and also (clause 100) permits the diversion of a surplus accruing in any fund to another special fund.

The cost of capital works and their maintenance is greatly in advance of pre-war charges and, if municipalities are to be improved or even to maintain their existing standards, increased revenue is necessary.

The percentages at which the Commissioners may levy holding, water, lighting and conservancy rates have accordingly been raised, while a new tax on trades, professions and callings—on a scale to be fixed by the Commissioners and approved by Government—and a tax on vessels, moored at municipal *ghats*, have been proposed.

The tax on dogs is proposed with a view to check rabies rather than to raise revenue.

Power is taken also to impose at any time any other taxation, which the Commissioners may consider reasonable and which the Local Government and, where necessary, the Governor-General in Council may approve.

In clause 113, power is taken to impose a water-rate where a supply is based, *e.g.*, on sub-artesian wells with a somewhat restricted distribution system, or a lighting-rate, where, *e.g.*, oil-lamps are provided.

The latrine, conservancy and drainage services are to be maintained by means of the "conservancy-rate" in place of the sliding scale of latrine fees now in force.

The proviso to clause 118 under which the holding-rate on that portion of a valuation, which is in excess of one lakh is to be levied as at present at one-fourth of the ordinary percentage, may cease to operate in advanced municipalities, if the Local Government so direct.

The provisions regarding assessment are in some respects elaborated and, it is hoped, are given a more orderly and logical arrangement.

For convenience of assessment and collection it is provided in clause 120 that the owners of holdings shall be liable in the first instance for the payment of the general rate and the three special rates (water, lighting and conservancy). In the case of the special rates, however, they shall recover three-quarters of the amounts levied from the occupiers (*vide* clause 154). Even in respect of these rates it is equitable that the owner should pay a share owing to the interest which he must have in the maintenance of the municipal services.

A further important innovation is the proposal (clause 133) to create a panel of municipal assessors. Re-assessment is undoubtedly at present a weak point in some municipalities, and in providing for the creation of a body of independent and impartial assessors, Government are merely adopting a system which has always been in force in the democratic municipalities of Great Britain.

With the object again of securing an equitable and satisfactory assessment, it is proposed (clause 137) to place appeals against the assessment before a committee consisting of the Chairman, a municipal Commissioner appointed by his colleagues and a person nominated by the Local Government.

The latter can always be outvoted, but if he is well-selected, his views should be of value.

Power is taken to tax motor-vehicles.

(d) Conservancy, drainage and water-supply.

The Commissioners are given wide powers to enforce the provision for improvement of house-drains, cess-pools, privies and other such appurtenances and to secure the proper drainage of premises.

They are empowered to insist on the owners of private water-supplies cleansing or silt-clearing a tank or well; they may themselves disinfect such supplies and in accordance with rules framed by Government may provide for the regular analysis of water from any municipal or private supply, and they are required on the requisition of two qualified medical practitioners or of ten rate-payers (subject to certain safeguards against frivolous or vexatious applications) to have the water of any supply tested by the Public Analyst.

Power is taken also to prohibit wet cultivation where it is likely to be injurious to health or to contaminate a water-supply, and the Commissioners may take steps to secure the eradication of the water-hyacinth or any other noxious plant notified in this behalf.

Important provisions (clause 349, *et seq.*) are also introduced for dealing with insanitary buildings and overcrowding.

(e) Water-supply, lighting and drainage systems.

A statutory obligation is laid on the Commissioners (clause 265) to provide a sufficient water-supply, a sufficient drainage and conservancy system and proper lighting.

Apart from their more general powers of intervention in the case of default, the Local Government, after giving the Commissioners the fullest hearing, are empowered to enforce the provision of these primary needs (clause 268) and for this purpose to direct that any rate or rates authorized under the Act shall be levied or increased but not so as to exceed any *maximum* prescribed in that behalf. Important provisions are also introduced regulating in some detail the regulations of the Commissioners, *vis-à-vis* the individual, as regards—

(*i*) the laying of pipes, etc., through private premises;
(*ii*) connecting such premises with municipal sewers or mains;
(*iii*) the metering of premises;
(*iv*) the free or excess supply of water; and
(*v*) power to cut off the supply of water.

(f) Streets, buildings and *bustees*.

The elaborate provisions, which are required to secure the proper development of a town by means of wide and well-planned streets, would be inappropriate for many existing municipalities, and the provisions of the greater portion of Chapter VI will apply only to those towns to which they are expressly extended. This chapter gives the Commissioners wide powers in respect of town-planning and adopts the well-tried Calcutta principle of recoupment by means of the acquisition and re-sale, after development, of surplus lands.

The liberty of the individual to develop his property by means of narrow inadequate lanes is brought under control.

The more drastic provisions of Chapter IX (Buildings) and the building rules, which as Schedule VI form a part of the Bill, apply to those municipalities to which they are expressly extended.

The rules, based on those of Madras mufassal municipalities, are by no means too severe or rigorous for important towns, while for other municipalities rules of a more simple type can be framed under clauses 314 and 315.

The improvement of insanitary *bustees* has hitherto—partly owing to defects in the present law—received little attention in mufassal towns.

Sections 245, *et seq.*, of the Bengal Municipal Act are hardly less wide in their general import than the corresponding provisions of the Calcutta

Municipal Act, but if these provisions are to become effective, it is necessary to lay down in much greater detail the procedure which is to be adopted.

The Calcutta Municipal Act, 1923, has therefore been freely drawn on with the object of making more explicit and precise the steps which should be taken for the improvement of insanitary *bustees.*

(g) Restraint of infection, child-welfare and school hygiene.

The compulsory notification of certain specified infectious diseases (*vide* the definition of "dangerous disease") is proposed. The Commissioners are made responsible for the disinfection of infected buildings, conveyances, clothing, bedding and other articles, while persons suffering from certain diseases to be notified in this behalf are forbidden to deal in food-stuffs or wash clothes for the public. It may be assumed that leprosy would in the first instance be so notified.

The Commissioners are given power—subject to an appeal to the Magistrate or Commissioner—to direct that a school shall be closed or any scholars temporarily excluded therefrom, with a view to preventing the spread of disease.

It is proposed to give a similar power in respect of markets.

The Commissioners are expressly given power to provide midwives and to employ health visitors for the promotion of child-welfare, while the importance of the sanitary inspection of schools and of school hygiene generally is definitely recognized.

(h) Markets and slaughter-houses, sale of food and drugs and milk-supply.

The present Act provides inadequately for the regulation of private markets, and it is therefore proposed that the Commissioners should be given wider powers to enforce the improvement of such markets in respect of such matters as paving, drainage, passages and sanitary conveniences.

Provisions are introduced in the Bill for securing the use of standard weights and measures in municipalities to which such provisions have been expressly extended.

The better regulation of food-stuffs is desirable and power is taken for licensing certain trades, such as those of a sweetmeat vendor, baker, dairyman, etc.

The provisions for the inspection and seizure of unwholesome foods and drugs are amplified.

A safeguard is provided by requiring a Magistrate's order for the destruction of such articles.

Many municipalities are anxious to take measures for the improvement of the milk-supply. At the same time, few municipalities are at present in a position to enforce adequate control, and it has therefore been decided that instead of enacting elaborate substantive provisions on this behalf the Commissioners should be given wide powers to frame by-laws for the registration of dairymen and dairies, for the inspection and regulation of dairies and generally for securing and maintaining the purity of the milk-supply (clause 417).

(i) Registration of births and deaths.

The registration of vital statistics, which enables the public health expert to lay his finger on the weak spots of municipal administration, has hitherto not received sufficient attention. It is proposed to make the local registrar of births and deaths to some extent independent of the Commissioners by safeguarding him from punishment by the Commissioners except with the consent of the Local Government and also to empower him to institute proceedings against defaulters. The Commissioners will, however, be responsible for his salary.

(j) Nuisances (clause 432).

It has been considered necessary to state in great detail what is to be deemed a "nuisance". The inspection and abatement of nuisances is the key-stone of a sound and efficient public health department and for the education of public opinion, the guidance of the Commissioners and as a clear direction to the courts, it appears desirable to adopt the custom of English draftsmen by incorporating in the Bill an exhaustive or at least a comprehensive description of "nuisance", and by providing a more detailed form of procedure for the remedy of the same.

(k) Education.

The constitution of an Education Committee is made statutory. It could be appointed as one of the standing committees, but the subject is of sufficient importance to demand prominence in a comprehensive statute of this kind.

Where no education cess is levied under Act IV of 1919, the Local Government is empowered (clause 441) by general or special order to prescribe a percentage of the municipal income (exclusive however of the three chief special rates) to be applied to the promotion of primary education in any municipality.

General Remarks.

Every change of importance which it is proposed to make in the existing law is explained in detail in the subjoined Notes on Clauses, since it is desired in a measure of this magnitude to give the Council the fullest possible assistance in its consideration. A table has also been prepared and annexed to the Bill showing which provisions of the existing Act are omitted from the Bill, and indicating where those provisions of the present Act, which have been retained, are reproduced in the Bill.

It can hardly be denied that the division of the Bill into chapters dealing with distinct subjects will prove more convenient than the arrangement of the present Act, and it is believed that the insertion in each chapter of clauses empowering the Local Government or the Commissioners in meeting to make rules or by-laws will enable the Commissioners readily to realize the exact extent to which the Bill, as occasion demands, can be supplemented and amplified by the sub-legislation of rule and by-law.

It may be urged that having regard to the limited resources of many municipalities, the Bill is overloaded and unduly elaborated.

It deals, however, with no phase of municipal activity which is not already a commonplace of municipal administration in England, and, where any chapter is at present beyond the scope of a particular town, it still, though it may remain for some years a dead letter, possesses educative value and marks a goal, at which the body corporate, at a later stage, may easily aspire.

NOTES ON CLAUSES.

Chapter I.

Clause 2 has been revised in view of the provisions of the Bengal General Clauses Act.

Clause 3.—The definitions have been generally revised on the lines of the Calcutta Municipal Act, 1923, where applicable to mufassil conditions, and new definitions have been inserted where necessary. The definitions applicable to hill districts have been removed to Chapter XXIII so as to make the general portion of the Bill self-contained. Points in regard to the definitions are as follows:—

(*1*) "The Board of Public Health" for Bengal is substituted in clause 444 for the old Sanitary Board as the advisory body in matters of municipal administration affecting the public health.

(*3*) "Building." A definition of the term "building" has been inserted, as the absence of a suitable definition has given rise to much difficulty in the part in interpreting the law. The definition is based on section 3 (*s*) of the City of Bombay Municipal Act, 1888, and section 3(*7*) of the Calcutta Municipal Act, 1923.

(*4*) "Building-line." This definition has been inserted for the purposes of Chapter VI of the Bill. The wording of section 206 of the existing Act is defective and not in any way precise.

(*6*) The definition of "carriage" has been made clearer, the words "ordinarily drawn by animals" in the existing definition having given rise to complications.

(*9*) "Conservancy." It is desirable for the purposes of the conservancy rate to bring together under one term the various services in connection with latrines, scavenging and sewage.

(*16*) & (*18*) "Framed building." The term applies to buildings in hill municipalities. With the existing definition, most huts might be regarded as "framed buildings" to which the provisions for the improvement of *bustees* could not be applied. An attempt is made to remove this difficulty by the new definition.

(*22*) "Holding." The reference to the tax on persons contained in the definition, as set forth in the existing Act, has been omitted, as it is not proposed to continue the tax on persons.

(*25*) The definition of "hut" has been made more general owing to the varying conditions prevailing in mufassal municipalities.

(*26*) "Inhabitant". A definition of "inhabitant" has been inserted especially for the purposes of the clauses relating to public health.

(*29*) "Living thing." A definition of "living thing" has been inserted for conciseness. The English Acts which relate to food and markets contain a succession of references to animals, fish, game, poultry, etc., which add materially to the length of the Statute Book.

(*30*) "Lodging-house". A definition has been inserted in order to ensure the better regulation of lodging-houses for the poorer classes. Clause 445 may be compared in this connection.

The definition is made more restricted than in the case of the Puri Lodging-houses Act.

(*36*) "Occupier." The Calcutta definition is adopted.

(*38*) "Owner." The definition contained in the Calcutta Municipal Act, 1923, is adopted in preference to the definition contained in section 6 (*11*) of the existing Act. The position and liability of trustees are provided for in the body of the Act (*vide* clause 514). Provision is made for the inclusion in the term of persons who have rent-free tenants.

(*40*) "Premises." A wide definition is desirable, specially for the purposes of the clauses relating to public health.

(*43*) "Private street." As this Bill deals with municipalities, it has been considered advisable to eliminate the word "road" which occurs together with the word "street" in the present Act. The word "road" is now used in the present Bill only in connection with hill municipalities.

(*50*) "Street alignment." The definition contained in the Calcutta Municipal Act, 1923, is inserted for the purposes of Chapter VI. The present Act is entirely defective in its provisions relating to projected public streets.

(*54*) "Water for domestic purposes." The provisions of the existing section 288 are incorporated in the definition and amplified in view of municipal progress.

(*55*) "Water-works." A comprehensive definition of "water-works' has been introduced on the lines of the United Provinces Act owing to the more detailed provisions of the present Act in relation to water-supply.

Clause 4 is an interpretation clause based partly on the United Provinces Act, and framed with a view to securing all reasonable latitude to the Commissioners in making requisitions in the exercise of their powers under this Act.

Clause 5 has been inserted to prevent unnecessary litigation.

Chapter II.

Clause 6.—A special power has been taken to include railway areas within municipal areas, a safeguard to railway administrations being provided in clause 17 so as to secure their proper representation on the municipality and to enable the Local Government when necessary, of their own motion to alter the number of Commissioners of a municipality.

Clauses 10 and 11 have been inserted to fill a gap in the existing law, the point having been raised as to whether new notifications, rules and by-laws are necessary when changes are made in the municipal area.

Chapter III.

Clauses 14 to 17.—The principles underlying these clauses are explained in the Statement of Objects and Reasons.

Clauses 18 and 19.—These clauses embody in the law certain basic principles as to the preparation of the electoral roll.

Clause 20.—The provisions of this clause relating to disqualification are substantially based on those contained in the Calcutta Municipal Act, 1923. The existing Act only provides for removal after election or appointment, which means a fresh election and more expense.

Clause 21.—The principles underlying this clause are dealt with in the Statement of Objects and Reasons.

Clauses 22 to 41 set forth in much greater detail than was formerly the case the procedure in regard to the elections of municipal Commissioners. These matters were formerly left to rules under section 15. The new clauses relating to election offences, and in particular the clauses relating to corrupt practices, are based in the main on the Madras Act. Provision has been made in clause 24 for all elections to be held by ballot, and the definition of corrupt practices in clause 26 has been amplified so as to cover cases of unfair pressure on electors, such as has occurred of late at certain elections. *Clauses 33 to 40* deal with the decision of election disputes and follow in the main the provisions at present in force in Bombay.

Clause 40 has been inserted to minimise the present somewhat frequent interference by the courts with the working of municipalities by means of temporary injunctions obtained by disappointed candidates.

Clause 41 confers a wide rule-making power in regard to the details of elections. This power is not however so wide as at present, the most salient provisions in regard to the electoral roll and voting by ballot having been embodied in the text of the Bill.

Clause 42.—The provisions as to the election of the Chairman contained in sections 23 and 59 of the existing Act have been gathered together, the new draft having been taken partly from the Bihar and Orissa Act. This draft has however been amplified so as to avoid a lacuna between the election of a Chairman and the approval of the appointment by the Government. All the provisions contained in this and the subsequent clauses as to the election or appointment of Chairman are modified to meet the new constitution provided in the Bill.

Clause 46 provides for the decision by the Local Government of disputes relating to the elections of Chairman and Vice-Chairman, which disputes at present cause dislocation of work when under reference to the law courts.

Clause 48.—The general powers of the Chairman to act on behalf of the Commissioners have been more specifically defined, so as to cover cases under other Acts where powers, allied to those conferred by this Act, are vested in the local authority, *i.e.*, the Commissioners.

Clause 49.—The principles of delegation of powers by the Chairman to the Vice-Chairman are applied also to the delegation of powers by the Chairman to certain expert officers of the municipality, a general control at the same time being maintained.

Clause 50.—The duties of the Vice-Chairman have been defined on the lines of the United Provinces Act.

Clause 51 while dealing with the leave of the Chairman and Vice-Chairman enables the Local Government to declare the office of either the Chairman or Vice-Chairman vacant in the event of overstayal of leave. The existing Act is silent on this point.

Clause 52 combines provisions contained in existing sections 14, 21, 24, 25 and 26, and brings together the law as to tenure of office.

Clause 53.—It is proposed that the Commissioners shall make an oath or affirmation of allegiance to the King-Emperor. The proposed form of oath or affirmation is partly based on the form of oath or affirmation made by the Members of the local Legislature. Attention is invited to the explanation appended to this clause.

Clause 54 is based on section 27 of the existing Act. An omission is supplied by a detailed provision as to the treatment of vacancies caused by elections being declared void.

Clause 55 has been inserted to avoid a difficulty which has been experienced in regard to the conduct of the first meeting after a general election, and to avoid a lacuna that might otherwise occur if the Commissioners request the Local Government to appoint a Chairman.

Clause 56.—The procedure for the resignation of a Chairman contained in section 27A has been modified. An elected Chairman may resign under the Bill by informing the Commissioners in writing. An appointed Chairman must notify the Local Government, which appoints him, instead of the Commissioner of the Division as formerly.

Clause 57.—The power of removal is taken away from the Commissioner of the Division and given to the Local Government.

The wording of clause (*a*) has been modified from that of the present clause (*a*) of section 20 (*1*) to fall in with accepted modern standards.

Sub-clause (*2*) (*b*) is consequential on clause 53.

Sub-clause (*2*) (*d*) is inserted to prevent Commissioners acting in their private capacity against the municipality in the law courts.

This clause has been generally amplified, and has been made to cover part of the existing section 57.

Clause 59 has been amplified to make the provisions of clause 58 more safe.

Clauses 62 to 70 confer on the Commissioners powers in regard to the appointment of their establishments considerably larger than those conferred by the present Act. The control of the Divisional Commissioner in regard to this matter is practically eliminated except in regard to the decision of the question as to whether an officer of the municipality has become seriously indebted. At the same time the tenure of office of superior expert officers is made more secure in the same manner as in the Madras Act. The Local Government is given power to insist, where necessary, on the appointment of an expert officer for sanitary or other purposes even in the case of a small municipality. Power has been taken to enable the municipality to arrange for a provident fund combined with a system of bonuses on the principles which are in force in certain railway administrations, this being a strong inducement to employees to continue in service for a long period.

In the case of Health Officers and Sanitary Inspectors, the Local Government has been empowered to fix certain essential qualifications.

Clause 76, sub-clause (3), has been made a little more stringent in order to insure greater punctuality.

Clause 77.—While providing for the inspection of the minutes of proceedings by the tax-payers, it has been provided that a small fee for inspection may be levied by the Commissioners in order to avoid frivolous applications.

Clause 80.—The United Provinces Act has been followed in regard to the provisions for the settlement of disputes without reference to the law courts.

Clauses 81 and 82.—Provision has been made in these clauses for the appointment of special committees, the members of which need not be all Commissioners. This is particularly desirable in regard to such matters as child-welfare, school hygiene, etc.

Clause 83.—The rule-making power has been somewhat amplified to secure some latitude in regard to changes of procedure which may be found to be necessary in the light of experience.

Clause 85.—Provision has been made for the preparation and publication of the annual municipal report.

Chapter IV.

Clauses 86 to 92 bring together the various provisions of the law in regard to municipal property. The main changes in the existing law are in the direction of making it clear that the municipality may take up land for purposes of recoupment, a necessary provision, in order to enable them to carry out any comprehensive improvement scheme.

With reference to the ownership of streets, safeguards have been provided in cases of industrial concerns which maintain water-works, etc., which pass under municipal streets.

Clause 93.—The provisions of clauses 93 to 100 bring together the law in regard to the municipal fund in the same manner as that in which the funds of the Corporation are dealt with in the Calcutta Municipal Act, 1923.

Clause 94.—As in the case of the Calcutta Municipal Act, 1923, power has been taken to enable municipalities to maintain current and deposit accounts with approved banks.

Clause 95 provides for the usual first charges on the municipal fund.

Clause 96 sets out in detail the various objects on which a municipality may reasonably be called upon to spend its money. Greater latitude has been given to the municipality than is at present the case under the existing law. New provisions include the following :—

Item *(viii)* (the construction and maintenance of model dwelling-houses), item *(xiv)* (the prevention of the spread of epidemic diseases), item *(xv)* (the payment of the expenses of indigent inhabitants who have to be sent away for treatment for rabies, etc.), item *(xxi)* (the maintenance and improvement of municipal dairy-farms and provision of milk-supply), item *(xxvii)* (the proper maintenance and preparation of maps and plans), item *(xxviii)* (the provision of relief in time of famine or scarcity or internal commotion), item *(xxix)* (the power to contribute to charitable societies aiding in the disposal of unclaimed dead bodies and the dead bodies of paupers) and item *(xxxi)* (the power to compensate an employee for loss incurred in execution of his duty).

Clause 97 materially enlarges the powers of the Commissioners in regard to areas outside the municipality for the purpose of lighting and water-supply schemes and other essential services, in connection with which it is necessary to carry on work in the non-municipal area. A provision is also made for municipal scholarships to deserving residents of the municipality.

Clause 98 enables the Commissioners to take over any institution the affairs of which may most suitably be conducted by them.

Clause 99.—Except in the case of a salaried Chairman or Vice-Chairman, the Commissioners ordinarily shall not receive salaries. If they do so, they will be dealt with under the first item in the table in clause 485.

Clause 100 sets out the restrictions which should be imposed on the expenditure of monies collected for the purposes of the essential services of the municipality. It enables the municipalities, subject to any objection by the rate-payers, to amalgamate, with the sanction of the Local Government, the funds required for the three chief services, viz., lighting, water-supply and conservancy, and it safeguards the interests of the rate-payers against any expenditure of such monies on objects other than these three essential services.

Clauses 101 to 106 materially enlarge the powers of the Commissioners in regard to the budget estimates. The limit of expenditure on a particular scheme, which the Commissioners may incur without the previous sanction of the Local Government, has also been raised from Rs. 5,000 to Rs. 10,000. The power of modification of the budget renders it unnecessary to have a separate procedure as to transfer from one hand to another.

Clause 109 provides for proper audit of the municipal fund, the appointment of auditors and the payment of the cost of audit. It is proposed that municipalities shall pay the whole or part of this, as they would have to pay a chartered accountant if they were a private concern.

Clause 110.—As it is proposed that municipalities should have a much greater freedom than formerly in regard to their expenditure and their balances, it is necessary to reserve to the Local Government the power to prescribe the maintenance of an adequate closing balance.

Chapter V.

Clause 111.—The provisions in regard to municipal taxation are set forth in Chapter V. It is proposed, as stated in the Statement of Objects and Reasons, to abolish the tax on persons and to have a more uniform system of taxation than at present obtains in municipalities. The dog tax referred to in clause (*g*) of sub-clause (*1*), the tax on trades, professions and callings and the imposition of fees for the grant of licenses are new.

Clause 112.—The maximum rate on holdings has been raised as explained in the Statement of Objects and Reasons.

Clause 113.—In addition to the provisions contained in the existing Act, a provision has been made for the levy of a water-rate where water is supplied by municipal water-carts or similar agency and a lighting-rate where oil and acetyline lamps are employed. The maximum of the water-rate has been raised.

Clause 114.—The old latrine-rate has been converted into a general conservancy-rate, it being considered desirable that all matters relating to conservancy-and sewage shall form part of a connected system.

The provisions of sections 325 and 326 of the existing Act have been made more detailed, so as to set forth the liabilities and exemptions of mill owners, etc., who provide their own septic tanks or similar works.

Clauses 116 and 117.—Provision is made in these clauses for the levy of a consolidated rate where the Commissioners consider this to be desirable.

Clause 118.—Provision is made in this and the succeeding clauses for the entertainment of a more skilled agency than is at present employed in many instances for the assessment of the rate on holdings. It is proposed to maintain a panel of qualified municipal assessors from which municipalities may select competent officers whenever the time comes for re-assessment.

The clause follows closely the provisions of the existing section 101, but the Local Government is empowered to declare in certain cases that the proviso to sub-section (*2*), which limits the rating of buildings which have cost more than a lakh of rupees, shall not apply.

Clause 119 confers power on the Commissioners to settle doubtful points in regard to assessments without reference to the law courts.

Clause 120.—An important modification is proposed in regard to the system of rating. Under the existing system the latrine tax falls mainly on the occupier. It is now proposed to have a uniform system of rating under which the liability for the lighting, water and conservancy-rates shall fall upon the owner in the first instance, he being entitled to make equitable recoveries from the occupier under the provisions of clause 154. The owner is however made liable for one-fourth of the rate in all cases, because the maintenance of the municipal services serves his permanent interest in the holding.

Clause 123.—The existing section 102 is modified so as to prevent the Commissioners from further jeopardising the municipal finances by lowering the rates at a time when the municipal funds are in an unsatisfactory condition.

Clause 124 follows existing section 103, but provision is made for including the names of occupiers in the assessment list.

Clause 125 is based on existing section 97, but provides for the continuance of the former assessment until the commencement of a new year after the new assessment lists have been prepared.

Clause 126.—The provisions for amendment of the assessment list have been grouped together. A new provision is made in this clause for the giving of notice to any rate-payer of any alteration which the Commissioners propose to make in the assessment list, whereby he may be affected.

Clause 127 provides that the assessment list shall be conclusive, subject to the rights, conferred by a later clause, of appeal to a special committee.

Clause 129.—A new provision has been made to ensure that remissions made by the Commissioners shall be scrutinized from time to time. This provision exists in the rules of the audit department.

Clause 130.—More detailed provisions have been inserted in regard to the remission of rates on account of vacancy. Generally speaking, the principles of the Calcutta Municipal Act, 1923, have been followed in this matter. A more generous provision as to remission or refund is inserted in this clause, the former remission of one-half being increased to three-quarters. In clause (*i*) of sub-clause (*4*) provision is made that a person who keeps a pleasure-house or a second residence within a municipality is not entitled to a remission or refund on account of vacancy.

Clause 132.—A provision is made for proper notice being given of transfers of property within a municipality. The principle of this clause is taken from the Calcutta Municipal Act, 1923.

Clause 133 provides for the appointment of the panel of assessors.

Clause 134 enables the Local Government to see that the municipalities perform their duties in regard to the appointment of qualified men to prepare the assessment lists.

Clause 135 gives a further safeguard to the individual rate-payer by insisting that notice shall be given to him whenever his rates are raised or a new rate is imposed, so as to enable him to put forward his objections, if any, to the appeal committee.

Clause 136 while following existing section 113 lays down the time-limit for applications for review of an assessment.

Clause 137 provides for the appointment of a special committee, including a person appointed by the Government (who need not be a Commissioner) to decide appeals against the assessment list, instead of these appeals being heard by an appeal committee composed of, and appointed entirely by, the Commissioners.

Clause 139 makes the law more specific as to the powers of the Commissioners in regard to the realisation of rates pending an appeal.

Clause 141.—The drafting of existing section 118 has been slightly revised.

Clause 144.—The time-limit imposed by the existing Act for the issue of a distress warrant against a defaulter is extended to six months, as the existing limit of three months has been found to be inadequate. Otherwise the recovery provisions in clauses 144 to 153 follow substantially the existing law.

Clause 154 (*vide* note on clause 120).

Clause 156.—The list of carriages and animals which are exempted from the carriage tax has been brought up to date, and under clause 157 the Commissioners are given a general power of exempting special classes of carriages or animals from the tax.

Clauses 170 and 171 provide for the imposition of a dog tax.

Clauses 172 to 180 deal with the imposition of tax on carts. The provisions in regard to this tax have been changed considerably, the amount payable for registration being raised and special rates being imposed on carts propelled by mechanical power, *e.g.*, motor-lorries. In *clause 174* a special provision is made for the higher rate where the carts are of such a description that owing to their narrow tyres and rims they cause undue damage to the surface of the municipal streets.

Clauses 181 to 187 repeat with minor modifications the provisions of existing sections 149 to 155 in regard to ferries. The present section 148 is no longer necessary in view of the amendments already made in section 35 of the Bengal Ferries Act.

Clauses 188 to 194 deal with tolls on bridges. It is proposed to discontinue the existing power to levy tolls on roads, owing to the unsatisfactory nature of such tolls in themselves and the difficulty of arranging any satisfactory system of collection.

Clauses 195 to 202 reproduce with minor drafting amendments the general provisions of existing sections 161 to 172 in regard to tolls on ferries and bridges.

Chapter VI.

The provisions contained in *clauses 205 to 208* are new. They are on the lines of the proposals made in the Calcutta Municipal Act, 1923, and it is especially provided in *clause 204* that they shall only be enforced in those municipalities where the state of development is such that, in the opinion of the Local Government, they can profitably be introduced.

It will be noted that the provisions divide themselves into two parts, one for the prescription of the actual width of the street and the other for the proper frontage of buildings facing upon it, and provision for either of these objects can be made separately by the Commissioners according to requirements.

Care has been taken to safeguard existing property, so far as this is compatible with the public requirements. This is secured by the general restrictions relating to building lines contained in the proviso to sub-clause (*1*) and in sub-clause (*4*) of *clause 205*.

Provision in regard to additions to buildings or boundary walls is made in *clause 206* so that, where it is proposed to open out a proper street alignment within a municipality, a property owner shall not obstruct the carrying out of that project by indiscriminate building.

Power is also taken that, where the prospect of completing the street alignment is not immediate, permission may be given to owners to build within the street alignment subject to the condition of removal, when the project is brought to fruition.

Provision is made in *clause 207* for taking up vacant lands with a view to street improvements, and in *clause 208* for setting forward a building.

Clause 209.—This clause, as a general clause, gives powers to the Commissioners in regard to public streets, squares and gardens It is self-explanatory.

The provision of open spaces in a municipality is important from the point of view of public health and education, and special provision has therefore been made for this. Attention is invited to sub-clause (*e*) of this clause, whereby the Commissioners are able to put into effect their powers in regard to recoupment by selling off the improved building sites acquired in connection with any scheme of street improvement.

Clause 210 provides for the relinquishment or lease of public streets, squares and gardens which are no longer required by the municipality.

Clause 211 deals with projected public streets, and prescribes the minimum width for the same. The clause is based on the Calcutta Municipal Act, 1923.

Clauses 213 to 218 deal with private streets, the regulation of which is quite insufficiently provided for at present. These clauses (except clause 214, which follows the Madras Act) are also based on the Calcutta Municipal Act, 1923, and they are designed—

(*i*) to ensure that property owners shall not develop their property in such a manner as to create an overcrowded and insanitary area; and

(*ii*) to ensure that private streets, which may later be taken over as public streets, shall conform to the general design of the town instead of being narrow and insanitary lanes, impassable in rainy weather and a resort for bad characters on dark nights. The suitable regulation of private streets is essential, as these streets will pay a great part in the later development of the town.

Special attention is invited to the provisions of *clause 217*, under which the Commissioners can call on the owners of the land fronting or adjoining or abutting on a private street to put it in decent repair, and to *clause 218*, under which the persons interested are empowered to take necessary measures for putting their private streets in order and then handing them over to the municipality, thus divesting themselves of the cost of maintenance.

Clauses 219 to 232 follow more closely the scheme of the existing Act, being the routine provisions for the protection of existing streets, the proper fencing of excavations and the closing of streets for repairs, and the time-honoured provisions in regard to verandahs, platforms and such like projections. *Clause 227*, which is based on the United Provinces Act, is designed to prevent people cascading water from their roofs and elsewhere on to the heads of the passers-by.

Clause 224.—A definite provision is inserted on the same lines as in the United Provinces Act for the licensing of platforms upon or over any public street, this form of encroachment being particularly liable to occur, and otherwise difficult to keep within bounds. The fee for the license will not be large, but it is hoped that the provision will ensure proper registration of existing platforms and prevent subsequent increase in their area.

Clause 229 also deals with the removal of projections, encroachments and erections, the safeguards contained in the existing Act being maintained in regard to erections of old standing.

Clause 232.—Provision is made to empower the Commissioners to stop the indiscriminate use of public streets by hawkers and other like persons.

Chapter VII.

Clause 233.—The existing law has been amplified so as to include outfall—and disposal—works.

Clauses 235 and 237.—The provisions of existing section 187 have been split up. so as to make it clear that where a rate-payer pays the conservancy-rate, it is for the municipality to remove the sewage, rubbish and offensive matter to the places appointed for its disposal.

Clause 239.—Special provisions have been made for the conservancy of factories and business premises on the lines of the Calcutta Municipal Act, 1923.

Clause 241.—The wording of existing section 270 is unsatisfactory. The municipal sewers are the places into which sewage is to be put and yet the existing section prohibits this. The wording has therefore been recast.

Clause 242.—Special provision has been made for the disposal of carcasses. The time for giving notice, which is specified in the United Provinces Act, from which this clause has been taken, has been shortened in the interests of public health.

Clause 244 reproduces existing section 193. It is not proposed to re-enact existing section 194. This work should be done through direct municipal agency.

Clauses 245 and 246.—More detailed provisions than are at present in force have been inserted in regard to the provision of suitable privy accommodation in dwelling-houses and places where workmen are employed. The provisions of these clauses are based on those contained in the Calcutta Municipal Act, 1923, and allow for the improved systems introduced by modern sanitary engineering.

Clause 247 (read with the penalty clause) renders penal the obstruction, the illicit construction and the destruction of drains, cesspools, etc.

Clause 249 clearly defines the powers of the Commissioners to inspect latrines, urinals, cesspools, etc., and makes it clear that they may interfere with the surface of the soil of the premises in which such latrines, urinals, etc., are situated, and cause it to be opened for the purpose of such inspection.

Clause 250.—The drafting of the United Provinces Act in regard to requisitions relating to cesspools, etc., has been adopted as being preferable to that of the present law in Bengal.

Clause 251 enables the Commissioners to open up a way to any privy for the purpose of cleansing it, by requiring the owner to provide a suitable house-gully.

Clause 254.—Provision has been made to enable the Commissioners to make special scavenging arrangements for fairs, festivals and other large assemblies of people, whether within or in the neighbourhood of the municipality.

Clause 255 enables the Commissioners to deal with premises, where there are undue accumulations of filth, etc., by means of a special staff, to be paid for in whole or in part by the owner or occupier of the premises.

Clause 256.—The powers of the Commissioners to make by-laws in regard to conservancy have been amplified and more clearly defined.

Clause 257 defines the powers of the Commissioners in regard to the construction of drains, and *clause 258* defines their powers in regard to the alteration and improvement of drains. The existing section 197 and generally the provisions of the existing Act are quite inadequate in this connection.

Clause 259 defines the rights of the owner or occupier of a building or land to connect his private drains with the municipal drains.

Clause 261.—The powers which already exist under section 228 of the present Act, as conferred by sub-clause (*1*) of this clause on the Commissioners for the carrying out of a joint drainage scheme in regard to two or more premises, are qualified by the addition of sub-clause (*2*) which compels the Commissioners to give due notice of the alterations which are about to be made to the owners of the premises affected thereby.

Clause 262.—The provisions of this clause amplify the provisions of the existing section 227 of the Bengal Municipal Act.

Clause 263 introduces the power of the Commissioners to compel owners to construct cesspools and house-drains in cases where it is not possible to connect the house-drainage system with the municipal drains.

Clause 264 provides for by-laws relating to drainage.

Chapter VIII.

This chapter brings together and amplifies the provisions of the existing Act in regard to systems of drainage, sewerage, lighting and water-supply, and in particular the provisions regulating the construction and maintenance of systems which are joint between municipalities and other local authorities. The present provisions as to joint schemes are contained in sections 37A to 37M of the Act in so far as such schemes relate to water-supply or drainage. The new Chapter VIII extends the same procedure to joint lighting systems.

Clause 266.—The reference to electricity under this clause is somewhat more direct than that contained in the present section 319. Sub-clause (*2*) retains the power to Government to sanction advances in suitable cases to meet the cost of preparing and carrying out lighting or water-supply schemes.

Clause 267 restricts the power given by existing section 37J to the Local Government to order the execution of a joint scheme by an officer appointed by them.

Clauses 268 and 269 are based on section 37K of the existing Act and are applied also to lighting schemes. The procedure, however, is very much shortened, the Local Government under the present Bill being able to prepare a scheme of drainage, sewerage, water-supply, lighting, etc., without a long preliminary negotiation with the Commissioners. The subsequent stages are also shortened and powers of obstruction are removed, a safeguard, however, being provided in sub-clause (*3*) of clause 268, which requires the Local Government to satisfy themselves that the financial resources of the municipality will not be subjected to any undue strain by any scheme that may be enforced on it by the Government under this clause. Sub-clause (*4*) enables the Government to compel the defaulting Commissioners to raise the rates up to the maximum for the carrying out of any such essential scheme, and enables the Government to advance money from the public funds for the execution of such scheme. The appointment of a person to carry out a scheme, in connection with which the Commissioners have made default, is not a new power, but is contained in section 64 of the existing Act.

Clause 269 applies the provisions of clause 268 to joint schemes.

Clause 270 enables the municipalities to join in a scheme initiated under clause 268 or 269.

Clause 271 provides for the settlement of disputes.

Clause 272 enables the Local Government to take over any of the three essential services of a municipality in case of inefficient management. The necessity for this clause is set out in the Statement of Objects and Reasons. It deals with the taking over the management of a particular system and is more in the nature of a provision for an engineering control than for the control of a department.

Clause 273 introduces modern provisions in regard to the laying down of pipes, drains, wires or sewers through private land as in the Punjab Act.

Clauses 274 and 275 provide for due consideration being shown to the public in the laying of cables, wires, etc.

Clause 276 amplifies the provisions of the present section 290, which provisions at present relate only to water-supply. This principle of the existing section 290 is applied to water-supply, lighting and drainage.

Sub-clause (*2*) applies the principle of section 302 of the Act to water-supply, drainage and lighting connections.

Clause 277 is based on the Punjab Act and on the provisions contained in clause 228 of the Calcutta Municipal Act, 1923, the object being to secure that private connections within a reasonable distance of the municipal mains shall be connected therewith.

Clause 278 and the following clauses introduce modern provisions in regard to the measurement of gas, electricity and water by means of meters. The existing Act only provides specifically for meters in the case of water.

The use of meters for lighting is at present governed by the regulations, but it is desirable to provide for it in the body of the Statute.

Clause 280 gives the usual power of inspection for the reading of meters, and *clause 281* introduces the same presumption as in the Calcutta Municipal Act, 1923, as to the correctness of the reading.

In *clause 282*, however, it is provided that, if an incorrect meter has been found to be supplied and if the fact that it is incorrect is not due to its having been tampered with, the Commissioners shall provide a new meter at their own expense.

Clause 283 provides for the temporary replacement of a damaged meter which is under repair.

Clause 284 provides for the testing of meters, enabling owners and occupiers to challenge meter readings but at their own cost, unless the meter is found to be incorrect by more than two per cent.

Clause 285 provides against tampering with meters and sub-clause (*2*) introduces a necessary provision for evidence in proof of fraud.

Clause 286 provides against the injuring of meters and fittings.

Clause 287 corresponds with section 289 of the present Act.

Clause 288 corresponds with the existing section 291, but is more specifically drafted. It deals with the supply of water for purposes other than domestic purposes.

Clause 289 introduces more detailed provisions than are contained in the present section 295 for the calculation of the free allowance of water which is to be supplied for domestic purposes, and for the calculation of excess consumption and for the apportionment of the cost of such excess consumption between owners and occupiers of houses, with special provisions to cover cases where there is a transfer during a quarter.

Clause 290 corresponds with the present section 301 of the existing Act, but a sub-clause (*4*) has been added to enable the Corporation to see that the connection or fitting which has been approved by them shall be maintained in proper order after such approval.

Clause 291 gives the Commissioners the necessary power to supply water to persons outside the municipality or to other local bodies on terms approved by the Local Government and subject to sanction by the same. This clause amplifies the present section 300, and it imposes some control by the Local Government in this matter in the interests of the inhabitants of the municipality, to prevent undue preference being given to outsiders to the detriment of the persons living within the municipality.

Clause 292 collects various sections of the existing law relating to offences in regard to water-supply.

Clause 293 is on the same principle as section 305 of the existing Act, so far as the duty of the owner to keep the water connections of the house in repair is concerned, but it also provides for the occupier deducting any expenses incurred on repairs which should have been carried out by the owner, from the rent payable to him.

Clause 294 reproduces the existing section 304.

Clause 295 enables the Commissioners to take over and maintain communication-pipes and fittings of private water-works connected with the municipal water-supply. The provision is taken from Bombay and a similar power is contained in the Calcutta Municipal Act, 1923.

Clause 296 amplifies the provisions of the present section 297 as to the circumstances in which water may be cut off. Under the present Act water may be cut off if there is refusal to pay the water-rate. Following the decision of the Council with reference to the corresponding clause in the Calcutta Municipal Act, this power is abandoned, but there are other cases (which are stated in the present clause) under which it is necessary that water shall be cut off in the interests of the public.

The drafting is based on the provisions of the Calcutta Municipal Act, 1923, and special exceptions are made in regard to water required for privies and urinals.

Clause 297 gives a general rule-making power in regard to water, gas and electricity to the Local Government in order to secure that some definite standard shall be maintained in these matters in the various municipalities. The matters dealt with in this clause are largely technical and liable to change as progress is made in the science of engineering, and it is desirable that it should be possible to adapt these regulations to changing circumstances without having recourse to fresh legislation.

Attention is invited to sub-clause (*k*) whereby the Local Government are empowered to exercise a proper control over the charges that may be exacted by the Commissioners for the supply of water, gas and electricity. This is a very necessary safeguard to the rate-payers.

Chapter IX.

This chapter supersedes the existing sections 236. *et seq.* The wording generally follows that of the Calcutta Municipal Act, 1923, as being more up to date and comprehensive than that of the existing Act.

As in the case of the chapter relating to streets, only certain portions of this chapter will apply to the less advanced municipalities. Buildings in such municipalities will be regulated by model rules and by-laws. In the more advanced municipalities, however, it is necessary to conform to the requirements of modern times.

Clause 298 limits the application of this chapter to the more advanced municipalities, except in the case of certain elastic clauses.

Clause 299 applies to all municipalities and provides for the prohibition of building on insanitary and unsuitable sites, this being of first importance to the health of the town and of the inmates of the building constructed.

Clause 300 enables the Commissioners, in the event of the extent or position of the site of a building being disputed, to decide the matter.

Clause 301 provides for the means of access to a new building and the prevention of the erection of a building in such a manner as to deprive others of access to a public road. This point is dealt with partly in section 241 (*c*) of the existing Act.

Clause 302 provides for the exemption of certain small buildings from the general building regulations and also for the speedy erection of temporary buildings, such as infectious hospitals, etc.

Sub-clause (*c*) of that clause provides against the infringement of private rights, which can only be protected by action taken on behalf of the owner of a dominant tenement.

Clauses 303 to 305 deal with applications for sanction. These clauses must be read with the details contained in Schedule VI. Provision is made against an arbitrary refusal by the Commissioners to accord sanction and also against their delaying to pass orders. If they do not pass orders within a reasonable time as provided by clause 304, then under clause 305 the person who desires to erect the building may proceed with the work provided that he does not contravene this Act or any rules, etc., made thereunder.

Clause 306 introduces a provision for a completion certificate after a new building other than a hut has been erected to enable the Commissioners to inspect under clause 307 the work that has been done. The provision at present exists in the case of Darjeeling.

Under *clause 307* the municipal authorities are empowered to inspect works in progress and after completion and to insist on their being carried out in conformity with the Act. This provision also was only applicable to Darjeeling under the existing law.

Clause 308 gives the grounds under which the erection of a new building may be refused and confines the Commissioners to certain clear and well defined reasons.

Clause 309 is taken from the United Provinces Act, and is designed to minimise the risk of fire in urban areas. In the case of inflammable roofs and walls, which have been erected before the Commissioners have prohibited the erection of such structures, compensation is to be paid to the owner if the structure is removed by order.

Clause 310 provides against fraud and misrepresentation in the making of applications under clause 303.

Clause 311 is based on section 239 of the existing Act, and it is made more specific as to the limit of time within which building operations are to commence after sanction has been given. This point is not provided for satisfactorily in the present law.

Clause 312 is based largely on the provisions of the Calcutta Municipal Act, 1923, and provides for the control by the Commissioners of material alterations and additions to buildings. It explains definitely the kind of repairs, etc., that are to be considered to be material alterations and additions. A provision to regulate such repairs is on the face of it as necessary as a provision to regulate the erection of new buildings. More breaches of the building regulations occur in regard to such alterations and additions than when a building is being built owing to the difficulty of check.

Clause 313 enables the Local Government to alter the building regulations contained in Schedule VI where necessary. A similar provision in regard to other schedules is contained in clause 541.

Clause 314 provides for the adaptation of the provisions of this Act and of Schedule VI to less advanced municipalities by means of by-laws framed by the Commissioners either of their own motion or under orders of the Local Government.

Clause 315 deals in far greater detail than the present section 241 with the various matters which should be provided for by means of by-laws. These matters are technical and it is not necessary to refer to them in detail. The need of proper ventilation and sanitation is made more clear than in the existing Act.

Clauses 316 and 317 group together the provisions for the demolition or alteration of any unlawful work under the orders of a Magistrate on an application by the Commissioners after the owner has had an opportunity of complying with a requisition made by the Commissioners. A similar provision exists in section 244 of the present Act in regard to Darjeeling.

Clause 318 gives the owner a special opportunity of showing cause before a prosecution is instituted against him for failure to comply with a requisition made by the Commissioners in regard to matters referred to in clause 316 or clause 317.

Clause 319 provides for the discontinuance and if necessary the stopping of unlawful building. A somewhat similar provision is in force in Darjeeling. This is now made of general application.

Chapter X.

Bustees.

This chapter deals with *bustees* on a principle different altogether from the principles of the existing Act. Under the existing Act provision is made in sections 243 and 244 for the control of the erection of new lines of huts, and in sections 245 *et seq*. there is a general power to affect sanitary improvements in *bustees*. The provisions of this chapter are however based on those contained in the Calcutta Municipal Act, 1923, the problems in this

respect being similar both in Calcutta and in the mufassal and the Calcutta provisions being more detailed.

In *Clause 320* power is taken to define the limits of a *bustee*, and it is provided that the provisions of this chapter shall not apply either to small groups of huts in an area of less than two bighas or to certain masonry buildings included in a *bustee.*

Clause 321 provides for a proper inquiry, whenever it is reported that a *bustee* is in an insanitary state, by a registered medical practitioner or a person holding the diploma of public health and an engineer. A proper lay-out is to be prepared by these persons. These persons will be an authority independent of the Commissioners, and they will devise a scheme for altering the *bustee* so as to make its condition sanitary. The Commissioners under *clause 322* may take action on their report.

Clause 323 deals with expenses in regard to *bustee* improvement. These expenses will ordinarily fall on the owner of the *bustee* and the owners of huts, but in special cases the Commissioners may meet the whole or a portion of the charges which should be borne by the owners of huts and may advance from the municipal fund money to defray the charges which should have been borne by the owner of the *bustee* land itself. In the latter case they will have a lien on such land for the repayment of what they have lent.

Clause 325 deals in detail with the treatment of masonry buildings in a *bustee.* Generally speaking, such masonry buildings are not to be interfered with except by acquisition and on payment of full compensation.

Clause 326 deals with streets and passages in *bustees.* These streets and passages require special treatment owing to the way on which huts are taken up and replaced in other positions.

Clauses 327 and 328 provide for the common bathing arrangements and common privy accommodation in a *bustee*, and also for lighting, water-supply and other conveniences in a *bustee.*

Clause 329 gives power to the owner to remove huts and cause the *bustee* to cease to be treated as such. Necessary safeguards are however included as in the Calcutta Municipal Act, 1923, to see that huts are not temporarily removed merely in order to gain time and then put them up again. Provision is also made in sub-clause (*8*) for compensation in cases of hardship, owing to *bustee* land, on which there are roads, ceasing to be included within the *bustee.*

Clause 330 provides for street alignments of huts in those *bustees* for which it is considered inexpedient to provide a regular standard plan and for the leaving of suitable open spaces. This is the milder form of procedure for the improvement of a *bustee* and under *clause 331* adequate time is allowed for the hut-owners to set back their huts to the prescribed alignment at the time of repair or rebuilding of the same. Seven years is considered a suitable time for this purpose. Compensation may also be paid in cases where, after the expiry of five years, the Commissioners decide to compel the hut-owner who has not set back his hut to do so. It is not desirable that such compensation should be greater than the value of the hut less the value of the materials.

In *clause 332* provision is made for the alignment of masonry buildings erected in a *bustee*, in respect of which a standard plan has been prepared or a street alignment prescribed.

Chapter XI.

Clause 333.—The drafting of section 199 of the existing Act has been adopted with slight formal alterations.

Clause 334 defines more specifically the powers of the Commissioners to make owners and persons having control over sources of water-supply which are used for drinking or culinary purposes liable to protect the same from pollution.

Clause 335 is largely a corollary of clause 334 and, in addition to the powers contained in the present section 199A of the Bengal Municipal Act, provides for the filling up of insanitary wells, etc.

Clause 336 provides a necessary power of inspection, and *clauses 337, 338 and 339* introduce detailed provisions on the lines of the English Public Health Act for the proper analysis of drinking water and water used for culinary purposes, whether supplied by the municipality or taken from the sources under the control of private parties. Extensive powers of analysis of food exist already under the Bengal Food Adulteration Act, but that Act does not cover the analysis of water-supply. Provision is made against harassment of parties by frivolous requests for analysis.

Chapter XII.

Clause 341 is a new clause based on the Calcutta Municipal Act, 1923, to provide for the proper control of places where water accumulates to the detriment of the public health. This is a particularly important clause for the eradication of malaria and the promotion of public health. The provisions are not, however, made as stringent as is the case in Calcutta.

Clause 342 gives the Commissioners more detailed powers than they have at present in regard to the control over excavations.

Clause 343 provides for a further safeguard to members of the public in regard to excavations, being framed in order to prevent them from falling into the same. The provision exists in the present Act, but the limit of time within which the excavation is to be protected has been removed in the interests of safety.

Clause 344 is new and provides for the control of noxious plants and water-hyacinth.

Clause 345 gives a specific power to the Commissioners to inspect buildings on sanitary grounds, and *clause 346* provides for the cleansing and white-washing of buildings on such grounds.

Clause 347 reproduces section 195 of the existing Act, but is worded somewhat more widely than that section. In particular, the danger of jungle in municipalities as a bar to ventilation is more clearly recognised than in the existing law, as are also the evils arising from thick vegetation even though such vegetation is not in itself noxious.

Clause 348 amplifies the provisions contained in the present section 210, the wording of which has been found to be defective, the drafting of the clause, therefore, being made more general.

Clause 349 introduces the provisions of the Calcutta Municipal Act, 1923. in regard to obstructive buildings objectionable on sanitary grounds. This clause is of special importance in regard to any project for the comprehensive improvement of a municipal area.

Clauses 350 and *351* make more specific the powers of the Commissioners to cause the vacating of dwelling-houses which are unfit for human habitation. The provisions of these clauses are taken from the Calcutta Municipal Act, 1923, and provide for a more detailed procedure for putting buildings of this type into proper condition than exists in the present law.

Clause 352 provides against overcrowding, and is a necessary addition to the existing law, especially in industrial areas. It follows the law which obtains in Madras.

Clause 353 gives an emergency power to the Commissioners to take action themselves in regard to property which is in such a condition that it causes imminent danger to the public. This clause follows the United Provinces Act.

Chapter XIII.

Clause 354.—The list of offensive and dangerous trades, occupations and processes has been made more specific in the light of experience. The wording of sub-clause (*x*) has been made more general in view of the recent decision of the High Court that "kilns" do not include "clamps". Necessary provisions in regard to petroleum have been inserted in sub-clause (*4*).

Clause 355.—The drafting of section 310 has been slightly altered, the word "nuisance" having a special technical significance in this Bill under the provisions of Chapter XXI.

Clause 356.—The drafting of this clause has been made somewhat wider than the present section 263, so that control over the keeping of horses, ponies, cattle, etc., in any part of a municipality may be exercised by the Commissioners.

Sub-clause (2) gives detailed powers to the Commissioners to prescribe that horses, ponies, cattle, etc., shall be kept in sanitary and well constructed stables or stalls.

Clause 357 is based on the present section 264, but it also enables the Commissioners to license places as public stables on such conditions as they may think to be proper.

Clause 358 should be read with sub-clause (*b*) of clause 359 in so far as it relates to the stalling of horses, camels, cattle, etc., and with sub-clause (*c*) of that clause in so far as it relates to the prevention of any public nuisance from the stalling and straying of pigs. Representations have been made from municipal authorities that increased powers in this last direction must be taken owing to the annoyance caused.

Chapter XIV.

Chapter XIV "Restraint of infection" is almost entirely new. The existing Act provides no scientific machinery for checking the spread of infectious or contagious diseases. The provisions of this chapter are taken from the Public Health Acts of various countries and from the Public Health sections adopted by provinces whose municipal legislation is more advanced than is the case in Bengal.

Clause 360 imposes a definite duty on the Commissioners to take action in the event of the outbreak of any dangerous disease and defines the duties which they are to carry out in this connection.

Clause 361 provides for the preliminary step of notifying the occurrence of any infectious case in a private house.

Clause 362 provides for the removal of patients to an isolation hospital, due provision being made for securing the privacy of women according to custom and for the presence of an attendant with female patients. It also provides for the maintenance of an adequate nursing staff to deal with infectious cases.

Clause 363 provides for the disinfection of premises where infectious cases have occurred, or which are kept in such a condition that they are likely to foster dangerous diseases. Provision is made that, where the occupier of the premises which are cleansed is indigent, the municipality may bear the cost of such disinfection. Provision is also made for the vacation by the inmates of premises which are being disinfected, temporary accommodation being provided by the authorities during the period of such vacation.

Clause 364 gives a necessary power to the Commissioners to destroy a hut or shed to prevent the spread of infection, suitable compensation being given to the owner thereof.

Clause 365 provides against the letting out of infected houses until the work of disinfection has been properly carried out.

Clause 366 provides for the supply of places and materials for disinfection, and for the disinfection of clothing or conveyances or any article which has been infected, and for the destruction of, and grant of compensation for, any article which is likely to retain infection or cannot be preserved.

Clause 367 is a corollary providing for the washing of conveyances, clothing, etc., exposed to infection.

Clause 368 renders penal the doing of certain acts by infected persons which are likely to cause risk of infection to others.

Clause 369 applies the same principle to the disposal of infected articles by private persons at the risk of their neighbours.

Clause 370 imposes certain elementary safeguards in regard to the segregation of the infected, and enables persons driving, or in charge of, a public conveyance which is used for the carrying of an infected person to a hospital, or for the carrying of a dead body, for disposal or of infected clothing, etc., for disinfection or destruction, to charge an adequate fare for the expense and trouble to which he will subsequently be put in getting his conveyance disinfected.

Clause 371 provides for the disinfection of public conveyances after these are exposed to contamination.

Clause 372 provides for the maintenance by the Commissioners of ambulances for the removal of infectious cases.

Clause 373 provides for the inspection of infected premises.

Clause 374 provides for the closing of a market with a view to prevent the spread of any dangerous disease, subject to an appeal by the occupier or farmer or any person interested to the Magistrate or the Commissioner of the Division.

Clause 375 makes a like provision in regard to the closing of a school owing to the appearance of a dangerous disease amongst the scholars or owing to the state of the school. This clause is based on the Scotch law.

Clause 376 gives detailed powers in regard to by-laws relating to the prevention or the spread of dangerous diseases, more particularly in regard to the sanitation of places where a number of persons are employed, and to the safeguarding of the public from infection from carcasses of animals. A special provision is taken to enable municipalities to combat malaria.

Clause 377 introduces a power to the Health Officer to see to vaccination within a municipality.

Chapter XV.

Chapter XV is also a new chapter, dealing with hospitals, dispensaries, child-welfare and school hygiene. The present power of the Commissioners to contribute to the maintenance of hospitals, dispensaries, etc., has been carried forward in the Bill to the chapter on Municipal property and finance [*vide* item (*xi*) of sub-clause (*1*) of clause 96].

Clause 378 gives detailed powers to the Commissioners to establish their own hospitals and dispensaries.

Clause 379 provides for the maintenance of midwives and health-visitors. In the case of midwives, it is made legal to impose a fee, but it is not intended that fees shall be imposed for the service of health-visitors whose duties will be advisory, though their qualifications will be prescribed. The municipality may themselves offer a salary to a health-visitor if they think fit to do so.

Clause 380 gives to the Local Government the power of making rules for child-welfare and for the proper care of maternity cases. It is necessary that municipalities should take steps to prevent to a greater extent, than is at present the case, the heavy infant mortality that takes place in urban areas in this province. Provision has been taken for the proper sanitary inspection of schools and colleges in the interests of the people.

Chapter XVI.

Clauses 381 and 382.—These clauses reproduce the provisions of the existing Part XIA of the present Act in regard to the extinction and prevention of fire.

Clause 383 introduces provisions for the safeguarding of urban areas by the power of inspection and seizure and confiscation of dangerous and inflammable materials improperly stored within a municipality.

Clause 384 also provides for the regulation of the stacking or collecting of hay, straw, wood, thatching grass, jute or other inflammable materials.

Clause 385 provides for the making of by-laws not only in regard to municipal fire-brigades but also in regard to any volunteer fire-brigades which the Commissioners may recognise.

Chapter XVII.

Markets and slaughter-houses.

Clause 386, which is based on the Calcutta Municipal Act, 1923, amplifies section 335 of the existing Act. Attention is invited to sub-clause (*3*) whereby the Commissioners may, in the interests of the public, cancel the license of any person who closes his shop to the inconvenience of the public. A similar power in regard to private licensed markets has been taken under sub-clause (*2*) of clause 389.

Clause 387 gives definite power to the Commissioners to close any municipal market.

Clause 388 is based on the Madras law, and gives power for the removal of unauthorised persons selling their wares in a municipal market.

Clause 389 deals with the regulation of, and grant of licenses for, private markets.

Clause 390 enables the Commissioners to apply to the Magistrate in order to close any unlicensed place which is used as a market.

Clause 391 brings into the municipal law the provisions formerly contained in the Bengal Municipal (Slaughter-houses and Meat-markets) Act, 1865, following the form adopted by the United Provinces in their legislation.

Clause 392 is also based on the provisions of the Bengal Municipal (Slaughter-houses and Meat-markets) Act, 1865.

Clause 393 brings together the various provisions in regard to the proper construction and care of private markets or private slaughter-houses, particularly in regard to the draining and cleansing of such places. The fixed period of 30 days before a penalty can be imposed is removed, the matter being dealt with on the general lines of failure to comply with a requisition.

Clause 394 provides for the construction of proper approaches and streets to or in private markets, and for the defining of the limits of such markets.

Clause 395 gives detailed powers for the ejectment of persons who have been convicted of contravening any by-law made under section 396 from markets or slaughter-houses, and for the prevention of such persons carrying on their business there in future and for the removal by owners of private markets of tenants convicted of contravening such by-laws.

Clauses 396 and 397 correspond to sections 339, 341, 342 and 343 of the existing Act.

Clause 398 gives detailed powers of making by-laws in regard to markets and slaughter-houses, particularly in regard to the proper cleansing and sanitary condition of the same and the care of animals, and the prevention of cruelty, nuisances and obstruction.

Chapter XVIII.

Chapter XVIII is also new and provides for the regulation by the Commissioners of weights and measures to be in use in the municipality. This chapter is only to be in force in municipalities to which it has been specially extended. The provisions of this chapter are the result of consultation with various local bodies as to simple regulations which may be enforced in a mufassal municipality.

Clause 401.—The standard weights which are to be adopted when this chapter is enforced are the Government standard weights which are described in this clause, and under *clause 400* power is taken for the destruction of false weights and measures.

Chapter XIX.

The provisions of Chapter XIX are to some extent supplementary to the provisions of the Bengal Food Adulteration Act, which has fairly recently been passed by the Council. They are mainly taken from the Calcutta Municipal Act, 1923. The provisions of sections 249 to 257 of the existing Act have been found by the municipalities to be wholly inadequate for the purpose of preventing the sale of unwholesome food. The main principle of this chapter, however, remains as in the existing Act, and is that, although the executive of the municipality may take the initiative in the prevention of the sale of unsound or unwholesome food, final orders in the matter are to be passed by an independent magisterial authority.

Clause 402 provides for the licensing of persons who carry on the trade of butcher or who sell meat, game, poultry, fish, etc.

Clause 403 provides for the establishment of municipal bakeries and sweetmeat shops.

Clause 404 is based on the Calcutta Municipal Act, 1923, but is extended to the sale of confectionery, ice and aerated-waters. The licensing of dairymen, bakers, confectioners, sweetmeat makers and ice or aerated-water manufacturers is a most necessary addition to the law as a safeguard to the public health.

Clause 405 is based on the Calcutta Municipal Act, 1923, and prohibits the sale of diseased, unsound or unwholesome food or drugs.

Clause 406 introduces a salutary provision, taken from the Public Health Acts of Fiji and Trinidad, for the keeping of bread-stuffs, cake, pastry, sweetmeats and confectionery in properly covered utensils or receptacles when exposed for sale, as a protection against dirt, dust and flies.

Clauses 407 and 408 provide for the proper regulation of the compounding and sale of drugs recognised by the British Pharmacopœa, and for the proper qualification of compounders to compound such drugs.

Clause 409, as in the case of the existing law, exempts indigenous medicines from any such control, provided they are not sold in places where drugs recognised by the British Pharmacopœa are sold upon prescription. Some control over such drugs can, however, be exercised under the provisions of clause 405.

Clause 410.—The provisions of clause 410 are taken partly from the Calcutta Municipal Act, 1923, and the Punjab Law, and provide for the inspection of places where unlawful slaughter of animals or sale of flesh is suspected. They are not, however, so severe as those of the Calcutta Municipal Act, 1923, or the Punjab Law, in that it is necessary for the searching officer to obtain a warrant before he can make an entry.

Clause 411 gives powers of inspection of food and drugs on the same lines as sections 251B and 253 of the existing Act. The provisions, however, are more detailed, and the burden of proof is thrown on the party charged where unsound articles of food and drugs are found in places where articles of food and drugs are ordinarily kept or exposed for sale.

Clause 412 provides for the seizure of utensils. The provisions of this clause in regard to tea are made stringent (*vide* the Explanation).

Clause 413 provides for the destruction of articles of a perishable nature if they are found to be diseased, unsound, unwholesome or unfit for human food.

Clause 414 introduces provisions in regard to unwholesome food or drugs on the same lines as those contained in clause 410 in regard to the sale of flesh.

Clause 415 provides for the production before the Magistrate of living things, articles of food, drugs, utensils or vessels which have been seized, but which have not been destroyed according to law, and for the decision of the Magistrate as to whether these things shall be destroyed or not, and also for compensation in the case of unjustified seizure.

Clause 416 vests in the Commissioners the property in any living thing, food or drug condemned under this chapter.

Clause 417 enables the municipalities to take measures to ensure purity of the milk-supply. It must be read with clauses 404 and 406 and also with item (*xxi*) of sub-clause (*1*) of clause 96 under which the Commissioners are entitled to maintain their own dairy-farms, grazing-grounds and milk-depôts for the benefit of the inhabitants. The provisions which are detailed are based on the Public Health Acts of Fiji and South Africa, special care being enjoined in regard to the receptacles in which milk is kept, and to ventilation and the proper care of cattle.

Chapter XX.

Clauses 418 to 423 reproduce the existing law in regard to burial or burning grounds with a few minor alterations and amplifications.

The provisions contained in existing section 256 as to taking over buildings attached to closed burning or burial grounds are omitted.

Clause 424, sub-clause (2), introduces an important provision in regard to the safeguarding of the public from infection and contagion from the bodies of persons who have died from infectious and contagious diseases and for the rapid disposal of such bodies.

No important changes have been introduced in *clauses 425 to 427*. They follow substantially the existing law.

Clause 428.—The appointment of a Registrar and sub-Registrars for the purpose of the correct compilation of vital statistics is explained in the Statement of Objects and Reasons.

Clause 431 provides more fully for the procedure in regard to the registration of births and notices of deaths. The object of this clause is not only to ensure correct returns but also to enable the Public Health Department to put its machinery in motion where this is necessary.

Chapter XXI.

Chapter XXI deals with the more summary measures to be adopted in dealing with nuisances which are a cause of annoyance to the inhabitants of a municipality or the public in general or injurious or dangerous to health. It reproduces in *clause 432* a statement of many of the conditions which are enumerated in earlier clauses in the Bill, and it provides a procedure which in most cases is alternative to the procedure laid down in the earlier chapters. The definition of "author of a nuisance" in this connection is important as it enables the municipality to proceed under this chapter against any person by whose act, default or sufferance the nuisance is caused.

Clause 433, sub-clause (1), imposes on the Commissioners the duty of inspecting the municipality from time to time to see that nuisances do not exist, and sub-clause (*2*) enables them to enter any premises for the purposes of such inspection whenever they have reasonable grounds to believe that a nuisance exists therein and to open the subsoil and test the drains in cases where this is necessary.

Clause 434 enables any person to give information to the Commissioners of the existence of a nuisance and lays on municipal officers and police officers the duty of doing so.

Clause 435 enables the Commissioners to serve a summary notice on the author of a nuisance or the owner or occupier of the dwelling or premises calling on him to take action for its removal. In the event of his failing to do so, action is to be taken under *clause 436* through the Magistrate who may either require him to remove the nuisance, or order the

Commissioners to remove it and to realise the costs from the author of the nuisance or the owner or occupier of the premises. Action under this clause may also be taken where the nuisance has been removed but is likely to recur.

Clause 437 provides for the recovery of costs from the author of the nuisance, where the owner or occupier of the premises is not known or cannot be found.

Clause 438 enables the Magistrate to award compensation to a person on whom a notice has been served for the removal of a nuisance or to any other person if in his opinion that person would have been entitled to compensation if the proceedings had been taken against him otherwise than under this chapter and that the case is a fit one for the grant of compensation.

Chapter XXII.

Clause 439.—The existing Act makes no proper provision for supervision by the Commissioners of education in municipalities. This clause, therefore, provides for the appointment of an Education Committee somewhat on the lines laid down in section 65B of the Bengal Local Self-Government Act of 1885. Power has also been taken under items *(ix)* and *(x)* of sub-clause *(1)* of clause 96 to enable municipalities to contribute towards the efficient management of schools within their jurisdiction and also to grant scholarships.

Clause 440 defines generally the powers of the municipalities in regard to schools maintained by them or to which they make grants-in-aid.

Clause 441 enables the Local Government to regulate the percentage of the income of the municipality which is to be applied to primary education in cases where a special education cess is not levied under the Bengal Primary Education Act of 1919. It will be noted that it is not proposed that that part of the income of the municipality, which is derived from the lighting, water and conservancy rates and is applicable only to those essential services, should be diverted to this purpose.

Clause 442 enables the Local Government to assist the Commissioners with funds for educational purposes and provides for the proper allocation of such funds when such grants are made by Government.

Clause 443 gives the Local Government a rule-making power with a view to the maintenance of standard methods of educational management in the various municipalities.

Clause 444 provides for the duties of the Board of Public Health in regard to matters of municipal administration affecting the public health.

Clause 445 introduces a necessary provision for the regulation of *sarais*, *dharamsalas* and lodging-houses. This should be read with the definition of "lodging-house" contained in item *(30)* of clause 3. The provisions of this clause cover generally the proper lodging of pilgrims and travellers of the poorer classes.

Clause 446 enables the Commissioners to deal with hackney-carriage drivers if they refuse to ply for hire and thereby deprive the public of the necessary means of conveyance for which licenses have been granted to the hackney-carriage drivers. The necessary power has also been taken to deal with the owners.

Clauses 447 and 448 amplify the present general provisions contained in section 223 of the existing Act. It has been found in practice that a survey of municipal land should include a proper survey of buildings also.

Detailed provisions are made for the entertainment of professional surveyors and also for the maintenance by the Commissioners of the survey record by means of by-laws under which changes in the map, caused by property-owners, are to be notified by them in order that the map may be corrected. Suitable boundary-marks shall also be set up to define the limits of holdings.

Clause 449 amplifies the provisions of the present section 213 relating to the destruction of stray dogs.

Clause 450 enables suspected dogs to be properly segregated so as to avoid destruction of animals which may be found not to have been infected.

Clause 451 merely reproduces section 214 of the existing Act.

Clause 452 reproduces section 359 of the existing Act.

Clause 453 applies the principle which is contained in section 278 of the present Act in regard to the licensing of premises for particular purposes to the cancellation of such licenses when the premises are used otherwise than for those purposes.

Chapter XXIII.

Clause 454.—The provisions relating to hill municipalities have been collected from the body of the Act and brought together in Chapter XXIII. The main portion of the Act will, of course, apply to hill municipalities with certain exceptions. The main exceptions are those enumerated in clause 454.

A necessary extension of the definition of "drain" is introduced in *clause 455* when applying that definition to hill municipalities.

Clause 456 collects together the definitions applicable to hill municipalities which are at present scattered over section 6 of the existing Act.

Clauses 457 to 463 reproduce the provisions of sections 201A to 201G of the existing Act, and clauses 434 and 435 reproduce the provisions of the existing sections 207 and 207A.

Clause 466.—This clause should be read with section 201 of the existing Act and with clause 219 of the Bill. The latter clause will apply to public roads generally, including roads in hill municipalities.

Clauses 467 and 468 reproduce the provisions of sections 224B, 224C and 241Z of the existing Act.

Clauses 469 and 470 reproduce the provisions of sections 227 and 228 of the existing Act.

Clauses 471 and 472 reproduce the provisions of sections 210B and 210C of the existing Act.

Clauses 473 to 477 reproduce the provisions of sections 240A to 240E of the existing Act.

Clause 478 reproduces existing section 244V and *clauses 479 to 483* the provisions of existing sections 351D to 351H.

Clause 481 is based on the existing section 350A, but it is grouped more homogenously.

Sub-clause (a) regulates the actual control of the hillsides.

Sub-clause (b) corresponds to the first words of sub-clause (*a*) of section 350.

Sub-clauses (c), (d) and (e) introduce the traffic provisions necessary in a hill municipality.

Sub-clauses (f) and (g) are reproduced from section 350A of the existing Act.

Sub-clause (h) is consequential on the main clauses relating to hill municipalities.

Chapter XXIV.

Clause 485.—The penalty sections of the existing Act, which are scattered throughout the Act, have been grouped together on the same principle as in the Calcutta Municipal Act, 1923. Where, however, there is a power to impose imprisonment as well as fine, the point has been emphasised by the penalty being entered in a separate clause of the Bill (*vide*, for example, the clauses in regard to election offences).

Clause 486 deals with the penalties in regard to the erection of new buildings and additions and alterations to existing buildings. These matters cannot suitably be dealt with in a general penalty clause whch merely enumerates the subject-matter.

Clause 487 appears as a separate clause in virtue of the sentence of imprisonment which a Magistrate is empowered to impose on persons falling within its scope.

Clause 488 gives the usual power in regard to the attachment of a penalty to a breach of by-laws.

Clause 489 reproduces existing section 366.

Chapter XXV.

Clause 490 should be read with *clause 492*.

The existing section 351 deals with the procedure for publishing by-laws, etc. It is desirable to have a uniform system in regard to the publication of by-laws, orders and public notices, etc.

Clause 491.—The main provisions of the existing Act in regard to the making of rules and by-laws are brought up to date by recognising the practice of issuing model rules and by-laws and the fact that, where a standard form of rule or by-law is adopted, it is not necessary to go through a lengthy procedure. It also provides for the rescinding of model rules and by-laws by the Local Government.

Clause 493 provides for facsimile signatures being used in notices, etc., in order to save work to the municipal staff.

Clause 494 provides in detail for the persons who are empowered to issue notices, by-laws, summonses, etc.

Clauses 495 and 496 set out the procedure for the service of notices, by-laws, summonses, etc. This procedure is practically the same as in the existing Act, though the clauses have been re-arranged for the purpose of greater clearness.

Clauses 497 and 498 collect together the provisions in regard to the power of entry. The wording is based on the existing Madras Act and on the existing section 351C. Similarly powers have been taken in the Calcutta Municipal Act, 1923.

Clause 499 provides against the obstruction of the Commissioners or any of their officers and servants in carrying out their duties under this Act. It has been drafted so as also to cover the cases of officers who may be called upon to assist the Commissioners in effecting an entry.

Clause 500.—The existing provisions of section 175 are extended to requisitions made under any part of the Act, and such requisitions may be enforced against the owners and occupiers of lands and buildings and not only of lands which is the case under the present Act.

Clause 501 reproduces the provisions of section 176 of the existing Act. It is not, of course, applicable to proceedings for the removal of nuisances which are of an urgent nature. (In such cases the party has his opportunity of defending the case in the Magistrate's Court.)

Clauses 502 and 503 reproduce the provisions of sections 177 and 178 of the existing Act.

Clause 504 reproduces the provisions of section 179 of the existing Act with a small consequential amendment.

Clause 505 reproduces the provisions of section 180 of the existing Act with the addition of sub-clause (*2*) to make it clear that punishment for failure to obey a requisition does not close the matter. It might pay a defaulter to pay the penalty on each occasion rather than carry out a necessary work.

Clause 506 reproduces the provisions of section 181 of the existing Act with an amendment made consequentially to the enlargement of the scope of clause 500.

Clauses 507 and 508 reproduce the provisions of sections 182 and 183 of the existing Act with amendments on the same principle.

Clauses 509 and 510 reproduce the provisions of sections 360 and 361 of the present Act.

Clause 511 reproduces the provisions of section 212 of the present Act, except that it undergoes consequential enlargement on the same principle as clause 500.

Clause 512 reproduces the provisions of section 211 of the existing Act with a minor drafting amendment.

Clause 513 has been taken from the Bombay Act so as to avoid a lacuna in the existing law in regard to persons who damage municipal property. There is no corresponding section in the Bengal Act.

Clause 514 makes clear the position of agents and trustees in regard to property within a municipality of which they are agents or trustees. A similar provision has been inserted in the Calcutta Municipal Act, 1923.

Clause 515.—The principle of section 242A in regard to appeals in respect of buildings, etc., has been extended to appeals in regard to various other matters dealt with under the Bill. Where, however, the Commissioners under the Bill must only exercise at a meeting powers, which could formerly be exercised otherwise than at a meeting, it is not necessary to provide for an appeal.

Clause 516 follows section 352 of the existing Act, but also covers prosecutions for breaches of rules and by-laws.

Clause 517 reproduces the provisions of section 352 of the existing Act, except that it also covers prosecutions for breach of a rule.

Clause 518 reproduces the provisions of section 365 of the existing Act, with minor drafting amendments.

Clause 519 follows in the main the provisions of section 363 of the existing Act, but is enlarged on the same principles as have already been approved in the Village Self-Government Act (*vide* section 64 of that Act).

Clause 520 reproduces the provisions of sections 184 and 185 of the existing Act with a minor drafting modification.

Clause 521 reproduces the provisions of sections 316 and 358 of the existing Act, but it is made fuller, and the drafting of the United Provinces Act in this connection has been adopted.

Clause 522 is based on section 128 of the existing Act.

Clause 523 gives the Commissioners a discretion in deciding as to the persons who are bound to perform municipal duties, etc., or who have various rights in connection with municipal affairs. It is based on the Calcutta Municipal Act, 1923.

Clause 524 makes clear the position of municipal officers, servants, contractors and agents as public servants. A similar provision exists in the Calcutta Municipal Act, 1923.

Clause 525 provides for the prohibition of obstruction to municipal contractors and is also based on the Calcutta Municipal Act, 1923.

Clause 526 provides against the removal of boundary marks without the permission of the Commissioners.

Clause 528 gives the same power of delegation as exists in the present Act between the Local Government and the Commissioners of Divisions, except that the delegation is more general, only the constitutional provisions being excluded from the power of delegation.

Clause 529 is based on the existing section 64, but has been enlarged on the same principle as is adopted in the United Provinces Act, to enable the Commissioner, District Magistrate or Subdivisional Officer to call for reports and returns and copies of documents and to place before the Commissioners in writing his views on any matter concerning the municipality.

Clause 530 removes the lacuna in the existing Act in regard to the power of certain officers of Government to inspect municipal institutions, registers, accounts, etc.

Clause 531 enables the public health authorities to place their views on any matter of public health before the Commissioners, and the same power is granted to Inspectors of Schools in regard to educational matters in the municipality.

Clause 532 reproduces the provisions of section 63 of the existing Act.

Clause 533 reproduces the provisions of the first two paragraphs of the existing section 64. The third paragraph is dealt with under clause 535.

Clause 534.—This clause, as is explained in the Statement of Objects and Reasons, provides for the supersession of a particular department of a municipality, in connection with which there is gross mismanagement or persistent default or an abuse of power by the Commissioners. The provision is less drastic than the supersession of the whole municipality.

Clause 535 is on the lines of the third paragraph of the existing section 64.

Clause 536.—This clause is explained fully in the Statement of Objects and Reasons.

Clause 537 reproduces the provisions of section 65 of the existing Act.

Clause 538 reproduces the provisions of section 66 of the existing Act. This is the extreme case in which the Local Government is compelled to supersede a municipality.

Clause 539 enables the Local Government to withdraw sections that are extended by them to any municipality. It applies the general principles which are contained in the General Clauses Act.

Clause 540 reproduces the provisions of section 66A of the existing Act.

Clause 541 contains a power to the Local Government in regard to the alteration of the schedules, except in such matters as are basic to the Act or are provided for elsewhere therein.

THE BENGAL MUNICIPAL BILL, 1923.

Table showing the mode in which the provisions of the Bengal Municipal Act, 1884 (Ben. Act III of 1884), as modified up to date are dealt with by the Bill, together with notes explaining omissions, transfers of sections, etc.

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS.
Section 1 ...	Clause 1 (1)	
" 2 ...	" 2.	
" 3 ...	......	Omitted as unnecessary. Existing municipalities are continued under the proviso to clause 2.
" 4 ...	Clause 86 (3)	
" 5 ...	" 1 (4).	
" 6 ...	Clauses 3 and 456.	
" 6A ...	Clause 5.	
" 7 ...	......	Omitted as unnecessary. Existing Commissioners and existing taxes, etc., are continued under the proviso to clause 2.
" 8 ...	Clauses 6, 7 and 8.	
" 9 ...	Clause 6.	
" 9A ...	Clauses 7 and 8.	
" 9B ...	Clause 107.	
" 10 ...	" 6 (1), proviso (i).	
" 11 ...	......	Omitted as being repealed.
" 12 ...	......	Omitted as being repealed.
" 13 ...	Clauses 14 (1) and 84 (1) (a).	
" 14 ...	Clauses 15 and 52 (1) (a).	
" 15 ...	Clauses 18, 19, 21, 24 and 33 to 41.	
" 16 ...	Clauses 22 and 23.	
" 17 ...	......	Omitted. It is proposed that all municipalities should have a certain proportion of elected Commissioners except in the case of new municipalities during the first year of their constitution.
" 18 ...	......	Omitted as being repealed.
" 19 ...	Clause 58.	
" 20 ...	" 58 (2).	
" 21 ...	" 52 (1) (a).	
" 22 .	" 59 (1).	

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS.
Section 23 ...	Clauses 42, 43 and 57 (1).	Section 23 (1), (4) and (5) omitted as the procedure has been changed.
" 24 ...	Clauses 44, 52 (1) (b) and 57 (2).	
" 25 ...	Clauses 45, 52 (1) (b) and 57 (2).	
" 25A ..	......	Omitted as Chairman will be appointed by name only
" 26 ...	Clause 52 (2).	
" 26A ...	" 55.	
" 26B ...	" 51.	
" 27 ...	" 54.	
27A ...	" 56.	
" 28 ...	" 60.	
" 29 ...	" 14 (2).	
" 29A ...	" 528.	
" 30 ...	" 86.	
" 31 ...	" 87.	
" 32 ...	" 88 (1).	
" 33 ...	" 88 (2)	
" 34 ...	" 90.	
" 35 ...	" 89 (1).	
" 36 ...	" 89 (2).	
" 37 ...	" 91 (1), (2) and (3).	
" 37A ...	Clause 79.	
" 37B ...	......	Omitted as the proposed clause 266 renders them unnecessary.
" 37C ...	......	
" 37D ...	......	
" 37E ...	......	
" 37F ...	......	
" 37G ...	......	
" 37H ...	......	
" 37I ...	Clause 267.	
" 37J ...	" 266.	
" 37K ...	" 268.	
" 37L ...	......	Omitted as unnecessary in view of the general application of Chapter VIII of the Bill.
" 37M ...	......	Omitted as unnecessary.
" 38 ...	Clauses 71 and 84, (2).	
" 39 ...	Clause 72.	

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS.
Section 40 ...	Clause 73.	
,, 41 ...	,, 74.	
,, 42 ...	,, 76.	
,, 43 ...	,, 77 (1).	
,, 44 ...	,, 48.	
,, 45 ...	,, 49.	
,, 46 ...	,, 62.	
,, 47 ...	,, 64.	
,, 48 ...	,, 65.	
,, 49 ...	,, 69 (ii).	
,, 50 ...	......	Omitted as the proposed clause 78 renders them unnecessary.
,, 51 ...	......	
,, 52 ...	......	
,, 53 ...	......	
,, 54 ...	......	
,, 55 ...	......	
,, 56 ...	Clause 92.	
,, 57 ...	Clauses 58 and 485.	
,, 58 ...	Clause 75.	
,, 59 ...	Clauses 42 (3), 57 (2), 60 (1) and 64 (1).	
,, 60 ...	Clause 77 (2).	
,, 61 ...	,, 62 (2).	
,, 62 ...	,, 529.	
,, 63 ...	,, 532.	
,, 64 ...	,, 533	
,, 65 ...	,, 537.	
,, 66 ...	,, 538.	
,, 66A ...	,, 540.	
,, 67 ...	,, 93 (1).	
,, 68 ...	,, 95.	
,, 69 ...	,, 96.	
,, 69A ...	,, 100 (2) ...	Section 69A (1) omitted as unnecessary in view of clause 110 (1) (b).
,, 69B ...	,, 110 (1) (k).	
,, 70 ...	Clauses 110 (1) (a) and 97.	
,, 71 ...	......	Omitted as unnecessary in view of clause 110 (1) (b).
,, 72 ...	......	Omitted as unnecessary in view of clauses 101 and 110 (1) (c).
,, 73 ...	......	

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS.
Section 74 ...	......	Omitted as greater powers are being given by the Bill to the Commissioners in the matter of the budget estimates.
„ 75 ...	......	
„ 76 ...	......	
„ 77 ...	......	
„ 78 ...	Clause 110 (1) (e)	
„ 79 ...	„ 106.	
„ 80 ...	......	Omitted as the proposed clause 105 renders it unnecessary.
„ 81 ...	Clause 110 (1) (f).	
„ 82 ...	Clauses 110 (1) (f) and 104.	
„ 83 ...	Clause 94.	
„ 84 ...	„ 110 (1) (g).	
„ 85 ...	Clauses 111 and 112 (1) (a) and (3).	Section 85 (a) omitted in view of the proposed abolition of the tax on persons.
„ 86 ...	Clause 111.	
„ 87 ...	......	Omitted in view of the proposed abolition of the tax on persons.
„ 88 ...	......	
„ 89 ...	......	
„ 90 ...	......	
„ 91 ...	......	
„ 92 ...	......	
„ 93 ...	......	
„ 94 ...	......	
„ 95 ...	......	
„ 96 ...	Clause 121	
„ 97 ...	„ 125 (1).	
„ 97A ...	Clauses 126 (1) (e) and 126 (4).	
„ 98 ...	Clause 112 (1) (b) and (2).	
„ 99 ...	Clause 122 (1).	
„ 100 ...	Clauses 122 (2) and 485.	
„ 101 ...	Clause 118 (1), (2) and (3).	
„ 102 ...	Clause 123.	
„ 103 ...	„ 124.	
„ 104 ...	„ 128.	
„ 105 ...	„ 153.	
„ 106 ...	„ 129.	
„ 107 ...	„ 126 (1) (f).	

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS.
Section 108 ...	Clause 126 (1) (a) (c) and (4).	
" 109 ...	Clause 126 (1) (b) and (4).	
" 110 ...	Clause 130.	
" 111 ...	Clauses 131 and 485.	
" 111A ...	......	Omitted as the procedure is being changed ; Cf. clause 133 and 134.
" 112 ...	Clause 135.	
" 113 ...	" 136 (1) and (3).	
" 114 ...	" 137.	
" 115 ...	" 136 (2).	
" 116 ...	" 138.	
" 117 ...	" 140.	
" 118 ...	" 141.	
" 119 ...	" 142.	
" 120 ..	" 143.	
" 121 ...	" 144.	
" 122 ...	" 145.	
" 123 ...	" 146	
" 124 ...	" 147.	
" 125 ...	" 152.	
" 126 ...	" 149.	
" 127 ...	" 148.	
" 128 ...	" 522.	
" 129 ...	" 150.	
" 130 ...	" 151.	
" 131 ...	" 156.	
" 132 ...	" 158.	
" 133 ...	" 159.	
" 134 ...	" 160.	
" 135 ...	" 161.	
" 136 ...	" 162.	
" 137 ...	Clauses 163 and 485.	
" 138 ...	Clause 164.	
" 139 ...	" 165.	
" 140 ...	" 166.	
" 141 ...	" 167.	
" 141A ...	" 168.	

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS.
Section 141B ...	Clause 169.	
" 142 ...	" 172 (1) and (2)	
" 143 ...	Clauses 172 (3) and 173.	
" 144 ...	Clause 175.	
" 145 ...	" 176.	
" 146 ...	Clauses 177 and 485.	
" 147 ...	Clause 178.	
" 147A ...	" 179.	
" 147B ...	" 180.	
" 148 ...	......	Omitted as unnecessary
" 149 ...	Clause 181	
" 150 ...	" 182.	
" 151 ...	" 183	
" 152 ...	" 184.	
" 153 ...	" 185.	
" 154 ...	Clauses 186 and 485	
" 155 ...	Clause 187.	
" 156 ...	Clauses 187 and 485.	
" 157 ...	Clause 188.	
" 158 ...	" 189.	
" 159 ...	" 190.	
" 160 ...	" 191	
" 161 ...	" 192.	
" 162 ...	Clauses 193 and 485.	
" 163 ...	Clause 194.	
" 164 ...	" 195.	
" 165 ...	" 196.	
" 166 ...	" 485.	
" 167 ...	" 197.	
" 168 ...	" 198.	
" 169 ...	" 199.	
" 170 ...	Clauses 200 and 485.	
" 171 ...	Clause 201.	
" 172 ...	" 202.	
" 173 ...	" 12.	
" 174 ...	" 12.	
" 175 ...	" 500.	
" 176 ...	" 501.	

Bengal Act III of 1884.	Bill.	Remarks.
Section 177 ...	Clause 502.	
" 178 ...	" 503.	
" 179 ...	" 504.	
" 180 ...	" 505 (1).	
" 181 ...	" 506.	
" 182 ...	" 507.	
" 182A ...	......	Omitted in view of proposed clauses 500 and 501.
" 182B ...	......	
" 183 ...	Clause 508.	
" 184 ...	" 520 (1).	
" 185 ...	" 520 (2).	
" 186 ...	" 233.	
" 187 ...	Clauses 235 and 237.	
" 188 ...	Clause 66	
" 189 ...	Clauses 238 (1) and 239 (2).	
" 190 ...	Clause 249 (1).	
" 191 ...	" 249	
" 192 ...	Clauses 250 (1) and 252.	
" 193 ...	Clause 244.	
" 194 ...	......	Omitted as being a dead letter.
" 195 ...	Clause 347.	
" 196 ...	Clauses 86 (1) (d) and 243.	
" 197 ...	Clause 86 (1) (c).	
" 198 ...	Clauses 86 (1) (b), 257 and 258.	
" 199 ...	Clauses 333 *et seq* and 341.	
" 199A ...	Clause 335 (a).	
" 200 ...	" 341.	
" 201 ...	Clauses 222 and 219.	
" 201A ...	Clause 457.	
" 201B ...	" 458.	
" 201C ...	" 459.	
" 201D ...	" 460.	
" 201E ...	" 461.	
" 201F ...	" 462.	
" 201G ...	" 463.	
" 202 ...	" 228 (1).	

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS
Section 203 ...	Clause 228 (2).	
„ 204 ...	„ 229.	
„ 205 ...	......	Omitted as being covered by the provisions of Act XVIII of 1850
„ 206 ...	Clause 207.	
„ 207 ...	Clauses 225 and 464	*Cf* also clauses 205, 206 regarding building lines
„ 207A ...	Clause 465.	
„ 208 ...	„ 230	
„ 209 ...	„ 343.	
„ 210 ...	„ 348.	
„ 210A ...	Clauses 432 and 435.	
„ 210B ...	Clause 471.	
„ 210C ...	„ 472	
„ 211 ...	„ 512	
„ 212 ...	„ 511.	
„ 213 ...	„ 450 (*1*).	
„ 214 ...	„ 451	
„ 215 ...	„ 231	
„ 216 ...	Clauses 238 (*2*), 231 (*2*) and 485.	
„ 217 ...	Clauses 238, 240, 335, 253 and elsewhere in Chapter XI and clause 485	Section 217 (*2*) omitted—*see* section 194
„ 218 ...	Clause 485.	
„ 219 ...	„ 485	
„ 220 ...	„ 12.	
„ 221 ...	......	Omitted in view of proposed clause 12
„ 222 ...	......	
„ 223 ...	......	
„ 223A ...	Clause 447 (*1*).	
„ 224 ...	„ 250 (*1*) (*a*).	
„ 224A ...	„ 455.	
„ 224B ...	„ 467.	
„ 224C ...	„ 468 (*1*).	
„ 225 ...	„ 250 (*1*) (*c*) and (*a*).	
„ 226 ...	„ 260.	
„ 227 ...	Clauses 262 and 469.	
„ 228 ...	„ 261 and 470.	
„ 229 ...	„ 250 (*a*) and 500 (*2*).	

Bengal Act III of 1884.		Bill.	Remarks.
Section 229A	...	......	Omitted.
" 230	...	Clause 248.	
" 231	...	" 248.	
" 232	...	" 342.	
" 233	...	" 229.	
" 234	...	" 221.	
" 235	...	" 220	
" 236	...	" 309.	
" 237	...	Clauses 303, 304 and 299.	
" 238	...	" 303, 304, 305 and 316	
" 239	...	Clause 311.	
" 240	...	Clauses 303 and 312.	
" 241	...	" 315 and 299.	
" 242	...	" 349 and 350.	
" 242A	...	Clause 515.	
" 243	...	Clauses 303 and 304 and Schedule VI.	
" 244	...	Clause 316	
" 244A	...	" 305.	
" 244B	...	" 308.	
" 244C	...	" 308 and Schedule VI.	
" 244D	...	" 311.	
" 244E	...	......	Omitted
" 244F	...	Clause 306.	
" 244G	...	" 307 (*1*).	
" 244H	...	" 307 (*2*), (*3*) and (*4*).	
" 244J	...	Clauses 303 and 312.	
" 244K	...	Clause 316 ...	Clause 244 k (*b*) omitted.
" 244L	...	" 304.	
" 244M	...	" 304.	
" 244N	...	......	Omitted as the procedure is being changed.
" 244O	...	Clause 308.	
" 244P	...	" 311.	
" 244Q	...	......	Omitted, *see* section 244E.
" 244R	...	Clause 302.	
" 244S	...	" 316.	

1	2	3
Bengal Act III of 1884.	Bill.	REMARKS.
Section 244T ...	Clause 319.	
„ 244U ...	Clauses 316 and 317.	
„ 244V ...	Clause 478.	
„ 244W ...	......	Omitted as unnecessary.
„ 244X ...	Clause 350.	
„ 244Y ...	„ 352.	
„ 244Z ...	„ 468 (2) and (3).	
„ 245 ...	„ 321.	
„ 246 ...	„ 322.	
„ 247 ...	„ 323.	
„ 248 ...	„ 324.	
„ 248A ...	„ 473.	
„ 248B ...	„ 474.	
„ 248C ...	„ 475.	
„ 248D ...	„ 476.	
„ 248E ...	„ 477.	
„ 249 ...	„ 393.	
„ 250 ...	„ 414.	
„ 251 ...	„ 405.	
„ 251A ...	„ 517.	
„ 251B ...	Clauses 411 and 412.	
„ 251C ...	Clause 413.	
„ 251D ...	.....	Omitted in view of ss. 9 and 10 of the Bengal Food Adulteration Act, 1919 (Ben. Act VI of 1919).
„ 252 ...	Clauses 407, 408 and 409.	
„ 253 ...	„ 411, 412, 413, 414 and 415.	
„ 254 ...	Clause 418.	
„ 255 ...	„ 421.	
„ 256 ...	„ 422.	
„ 256A ...	„ 422 (2).	
„ 256B ...	„ 423.	
„ 257 ...	„ 421 (2).	
„ 258 ...	„ [illegible] (2).	
„ [illegible] ...	„ [illegible]	

1	2	3
Bengal Act III of 1884	Bill.	REMARKS.
Section 260 ...	Clause 425.	
„ 260A ...	„ 426.	
„ 261 ...	„ 354.	
„ 262 ...	„ 355	
„ 262A ...	„ 354 (*1*) (*x*).	
„ 263 ...	„ 356.	
„ 264 ...	„ 357.	
„ 265 ...	„ 358	
„ 266 ...	Clauses 250 (*1*) (*c*) and 485.	
„ 267 ...	Clause 486.	
„ 268 ...	Clauses 393 and 485	
„ 269 ...	„ 226 and 485.	
„ 270 ...	„ 241, 248, 250 (*1*) (*a*), 342, 309 and 485.	
„ 271 ...	Clauses 250, 248, 303, 262, 485 and 486	
„ 272 ...	Clauses 247, 260 and 485	
„ 272A ...	Clause 485 ...	Reference to sections 22?A, 244E, 244Q, 244Z omitted.
„ 272B ...	„ 485.	
„ 272C ...	„ 485.	
„ 272D ...	„ 485.	
„ 272E ...	......	Omitted.
„ 273 ...	Clause 485.	
„ 274 ...	„ 485	
„ 275 ...	„ 485.	
„ 276 ...	„ 485.	
„ 277 ...	„ 485.	
„ 278 ...	„ 453.	
„ 279 ...	Clause 113 and sub-clause (*a*) to the proviso to clause 97	
„ 280 ...	......	Omitted as there is a combined procedure for assessment to the various rates.
„ 281 ...	Clause 154 ...	(For the principle of apportionment.)
„ 282 ...	„ 130.	
„ 283 ...	Clauses 130 and 131.	
„ 284 ...	......	Omitted in view of clauses 130 and 131.
„ 285 ...	Item (35) in [illegible]	

1	2	3
Bengal Act III of 1884.	Bill.	Remarks.
Section 286 ...	Clauses 120, 154 and 155.	
" 287 ...	Clauses 265 (*a*), 266 and 273 (*1*).	
" 288 ...	......	Omitted in view of proposed definition of "water for domestic purposes" in clause 3 (*54*).
" 289 ...	Clause 287.	
" 290 ...	" 276 (*1*).	
" 291 ...	" 276.	
" 292 ...	" 280.	
" 293 ...	" 296 (*1*) (*e*) and (*2*).	
" 294 ...	Clauses 288 and 276.	
" 295 ...	" 289 (*1*) and (*2*) and 279.	
" 296 ...	Clause 256 (*d*).	
" 297 ...	" 296 (*1*) (*b*).	
" 298 ...	" 292 (*ii*).	
" 299 ...	" 292 (*iii*).	
" 300 ...	Clauses 291 and 292 (*i*).	
" 301 ...	Clause 290 (*1*), (*2*) and (*3*).	
" 302 ...	" 276	
" 303 ...	" 292 (*iv*).	
" 304 ...	" 294.	
" 305 ...	" 293.	
" 306 ...	" 86 (*1*) (*b*).	
" 307 ...	" 100 (*1*).	
" 308 ...	Clauses 113 (*1*) (*a*) and 266.	
" 309 ...	Clause 113 (*1*) (*c*).	
" 310 ...	" 113 (*1*) (*d*).	
" 311 ...	......	Omitted, *see* clause 118.
" 312 ...	......	Omitted in view of clause 120.
" 313 ...	Clause 154.	
" 314 ...	" 155.	
" 315 ...	" 289 ...	The general principle is changed as it is proposed that the rate will now be imposed on the owner.
" 316 ...	" 495.	
" 317 ...	" 297 (*f*).	
" 318 ...	" 297 (*g*).	
" 318A ...	" 100 (*1*).	

1	2	3
Bengal Act III of 1884	Bill.	REMARKS
Section 319 ...	Clause 113 (*1*) (*a*) and Chapter VIII.	
" 320 ...	Clause 233.	
" 321 ...	Clauses 111 and 114.	
" 322 ...	" 120, 141 (*2*), 100 and 125.	
" 323 ...	Clause 154.	
" 324 ...	" 155.	
" 325 ...	" 114 (*2*).	
" 326 ...	" 114 (*2*).	
" 327 ...	......	Omitted as being repealed
" 328 ...	......	
" 329 ...	Clause 253 proviso	
" 330 ...	" 236.	
" 331 ...	" 234.	
" 332 ...	" 246.	
" 333 ...	" 115.	
" 334 ...	Clauses 115 and 485.	
" 334A ...	Clause 114 (*1*) (*a*).	
" 335 ...	Clauses 96 (*xx*), 386 and 509.	
" 336 ...	......	Omitted in view of the proposed definition of 'market' in clause 3 (*31*)
" 337 ...	......	Omitted as unnecessary in view of the proposed clause 389.
" 338 ...	......	
" 339 ...	Clause 396.	
" 340 ...	" 389 (*1*) proviso	
" 341 ...	" 396.	
" 342 ...	" 397.	
" 343 ...	" 397.	
" 344 ...	" 485.	
" 345 ...	Clauses 390 and 485.	
" 346 ...	Clause 427.	
" 347 ...	" 428.	
" 348 ...	" 429.	
" 349 ...	" [illegible]	
" 349A ...	" [illegible]	
" 349B ...	" [illegible]	
" 349C ...	......	Omitted, see clause [illegible].
" 349D ...	Clause [illegible] (*1*) and [illegible]	

1		2	3
Bengal Act III of 1884.		Bill.	Remarks.
Section	349E ...	Clause 63 (2).	
„	349F ...	Clauses 63 (2) and 70 (c).	
„	349G ...	......	Omitted, *cf.* clause 335.
„	349H ...	......	Omitted as unnecessary ; for the proviso, *see* clause 62(2).
„	350 ...	Clauses 232 (a), 385 (e), 340, 256, 431 (iii) and 488.	Section 350 (e) omitted as unnecessary in view of proposed clause 432.
„	350A ...	Clause 484.	
„	350B ...	„ 488.	
„	351 ...	„ 490.	
„	351A ...	Clauses 83, 69 (i) and 491 (i).	Section 351A (e) omitted as unnecessary in view of proposed clause 142.
„	351B ...	Clause 484 (1) (h).	
„	351C ...	„ 497.	
„	351D ...	„ 479.	
„	351E ...	„ 480.	
„	351F ...	„ 481.	
„	351G ...	„ 482.	
„	351H ...	„ 483.	
„	352 ...	„ 516.	
„	353 ...	„ 517.	
„	354 ...	„ 492.	
„	355 ...	......	Omitted as being unnecessary, *vide* sections 386—389 of the Code of Criminal Procedure, 1898.
„	356 ...	Clause 496.	
„	357 ...	„ 495.	
„	358 ...	„ 521.	
„	359 ...	„ 452.	
„	360 ...	„ 509	
„	361 ...	„ 510.	
„	362 ...	„ 96 (*xxix*).	
„	363 ...	„ 519.	
„	364 ...	„ 527.	
„	365 ...	„ 518.	
„	366 ...	„ 489.	
„	367 ...	......	Omitted as unnecessary.

C. TINDALL,

Secretary to the Government of Bengal and
Secretary to the Bengal Legislative Council.





The Calcutta Gazette

WEDNESDAY, FEBRUARY 21, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st February, 1923, and is hereby promulgated for general information :—

ACT NO. I OF 1923.

An Act further to amend the Criminal Tribes Act, 1911.

WHEREAS it is expedient further to amend the Criminal Tribes Act, 1911; It is hereby enacted as follows :— III of 1911.

Short title.

1. This Act may be called the Criminal Tribes (Amendment) Act, 1923.

Amendment of section 2, Act III of 1911.

2. In section 2 of the Criminal Tribes Act, 1911 (hereinafter referred to as the said Act)— III of 1911.

(*a*) after clause (*1*) the following clauses shall be inserted, namely :—

"(*1a*) 'district' includes a Presidency-town and the town of Rangoon;

(*1b*) 'District Magistrate' means, in the case of a Presidency-town or the town of Rangoon, the Commissioner of Police"; and

(*b*) after clause (*2*) the following clause shall be inserted, namely :—

"(*2a*) 'Superintendent of Police' means, in the case of a Presidency-town or the town of Rangoon, any officer appointed by the Local Government to perform the duties of a Superintendent of Police under this Act."

Amendment of section 4, Act III of 1911

3. In section 4 of the said Act the words "or of any part thereof" shall be omitted.

Amendment of section 5, Act III of 1911.

4. In section 5 of the said Act,—

(*a*) for the words "a notice" the word "notice" shall be substituted;

(*b*) the words "or of such part thereof as is directed to be registered" shall be omitted; and

(*c*) in the proviso the words "or part thereof" shall be omitted, and after the word "registration" the words "and may cancel any such exemption" shall be added,

Amendment of section 13, Act III of 1911

5. In section 13 of the said Act, after the word "settled" the following shall be added, namely:—

"and any officer empowered in this behalf by the Local Government may, by order in writing, vary any notification under section 11 or under this section by directing the restriction of such criminal tribe to another area, or, as the case may be, its settlement in another place, in the same district."

Insertion of new section 13A in Act III of 1911.

6. After section 13 of the said Act the following section shall be inserted, namely:—

Power of Local Government to restrict or settle criminal tribe in another province.

"13A. Any notification made by the Local Government under section 11 or section 13 may specify, as the area to which the criminal tribe shall be restricted or as the place in which it shall be settled, an area or place situated in any other province, provided that the consent of the Local Government of that province shall first have been obtained."

Substitution of new section for section 15, Act III of 1911.

7. For section 15 of the said Act the following section shall be substituted, namely:—

Application of Act when criminal tribe is transferred from one province or district to another.

"15. (*1*) Where a criminal tribe is restricted in its movements to an area, or is settled in a place of residence, situated in a province other than that by the Local Government of which the notification under section 3 relating to such criminal tribe was issued, all the provisions of this Act and the rules made hereunder shall apply to the criminal tribe as if the notification had been issued by the Local Government of such other province.

(*2*) If a criminal tribe, having been registered under section 4 in any district, is restricted in its movements to an area, or is settled in a place of residence, situated in another district (whether in the same province or not), the register or any relevant entries or entry therein shall be transferred to the Superintendent of Police of the last-mentioned district, and all the provisions of this Act and the rules made hereunder shall apply as if such criminal tribe had been registered in that district, and the District Magistrate of that district shall have power to canel any exemption granted under section 5."

Amendment of section 16, Act III of 1911.

8. In section 16 of the said Act the words "Governor General in Council or the" and the words "or any part thereof" shall be omitted; and to the same section the following proviso shall be added, namely:—

"Provided that no criminal tribe shall be placed in a settlement unless the necessity for so placing it has been established to the satisfaction of the Local Government, after an inquiry held by such authority and in such manner as may be prescribed."

Amendment of section 18, Act III of 1911.

9. In section 18 of the said Act,—

(*a*) after the words "Local Government," the words "or any officer authorised by it in this behalf" shall be inserted; and

(*b*) in clause (*b*) the word "like" shall be omitted.

Amendment of section 20, Act III of 1911.

10. In sub-section (*2*) of section 20 of the said Act,—

(*a*) after clause (*e*) the following clause shall be inserted, namely :—

"(*ee*) the circumstances in which members of a criminal tribe shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted ; " and

(*b*) after clause (*h*), the following clause shall be inserted, namely :—

" (*hh*) the authority by whom and the manner in which the inquiry referred to in section 16 shall be held."

Amendment of section 22, Act III of 1911.

11. In section 22 of the Act,—

(*a*) to sub-section (*1*) the words " or with fine which may extend to five hundred rupees, or with both " shall be added ;

(*b*) in sub-section (*2*) for the words " a rule made under any other clause of " the words " any other rule made under " shall be substituted ; and

(*c*) after sub-section (*2*) the following sub-section shall be added, namely :—

" (3) Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence within the meaning of the Code of Criminal Procedure, 1898, may be arrested without a warrant by any officer in charge of a police-station or by any police-officer not below the rank of a sub-inspector." V of 1898.

Insertion of new sections 27A and 27B in Act III of 1911.

12. After section 27 of the said Act, the following sections shall be inserted, under the heading " Supplemental," namely :—

Power to deport certain criminal tribes to States in India.

" 27A. The Local Government, if it is satisfied that adequate provision has been made by the law of any State in India for the restriction of the movements or the settlement in a place of residence of persons such as are referred to in section 3, and for securing the welfare of persons so restricted or settled, may, with the consent of the Prince or Chief of that State, direct the removal to that State of any criminal tribe for the time being in the province, and may authorise the taking of all measures necessary to effect such removal :

Provided that no person shall be so removed if the Local Government is satisfied that he is a subject of His Majesty.

References to a criminal tribe to include references to part or member thereof in certain cases.

27B. The references to a criminal tribe in sections 4, 5, 14, 17 and 27A shall be deemed to be references to a criminal tribe or any part thereof, and the like references in sections 11, 13, 13A, 15 and 16 shall be deemed to be references to a criminal tribe or any part or member thereof."

H. MONCRIEFF SMITH,

Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, MARCH 21, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 5th March, 1923, and is hereby promulgated for general information :—

ACT No. IX OF 1923.

An Act further to amend the Indian Factories Act, 1911.

WHEREAS it is expedient further to amend the Indian Factories Act, 1911 ; it is hereby enacted as follows :— XII of 1911.

Short title

1. This Act may be called the Indian Factories (Amendment) Act, 1923.

Addition of new sub-section to section 22, Act XII of 1911.

2. To section 22 of the Indian Factories Act, 1911 (hereinafter referred to as the said Act), the following sub-section shall be added, namely,— XII of 1911.

"(*2*) where, in accordance with the provisions of sub-section (*1*), any person is employed on a Sunday in consequence of his having had a holiday on one of the three days preceding that Sunday, that Sunday shall, for the purpose of calculating the weekly hours of work of such person, be deemed to be included in the preceding week."

Amendment of section 37, Act XII of 1911.

3. In section 37 of the said Act, for clause (*j*) of sub-section (*2*) the following clause shall be substituted, namely,—

"(*j*) the parts of the machinery and electrical fittings to be kept fenced in accordance with section 18, sub-section (*1*), clause (*c*), and the provisions to be made for the protection from danger of persons employed in attending to the machinery, electrical fittings or boilers."

Amendment of section 41, Act XII of 1911.

4. In clause (*g*) of section 41 of the said Act, for the figures and letter "19B" the figures and letter "19A" shall be substituted.

Amendment of section 50, Act XII of 1911.

5. Sub-section (*2*) of section 50 of the said Act shall be omitted.

H. MONCRIEFF SMITH,
Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, MARCH 28, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 23rd February, 1923, and is hereby promulgated for general information :—

ACT No. III OF 1923.

An Act to provide for the restriction and control of the transport of cotton in certain circumstances.

WHEREAS it is expedient for the purpose of maintaining the quality and reputation of the cotton grown in certain areas in British India to enable the restriction and control of the transport by rail and the import of cotton into those areas : it is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Cotton Transport Act, 1923.

(*2*) It extends to the whole of British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "certified copy," in relation to a licence, means a copy of the licence certified in the manner described in section 76 of the Indian Evidence Act, 1872, by the authority by which the licence was granted ; I of 1872.

(*b*) "cotton" means every kind of unmanufactured cotton, that is to say, ginned and unginned cotton, cotton waste and cotton seed ;

(*c*) "cotton waste" means droppings, strippings, fly and other waste products of a cotton-mill other than yarn waste ;

(*d*) "licence" means a licence granted under this Act ;

(*e*) "notified station" means a railway station specified in a notification under section 3 ;

(*f*) "prescribed" means prescribed by rules made under this Act ; and

(*g*) "protected area" means an area into which the import of cotton, or of any kind of cotton has been prohibited by a notification under section 3.

Power to issue notification prohibiting import of cotton into protected area.

3. (*1*) The Local Government may, for the purpose of maintaining the quality or reputation of the cotton grown in any area in the Province, by notification in the local official Gazette, prohibit the import of cotton or of any specified kind of cotton into that area save under, and in accordance with the conditions of, a licence :

Provided that no such notification shall be deemed to prohibit the import into any protected area of packages containing any kind of cotton and not exceeding ten pounds avoirdupois weight.

(*2*) Any such notification may prohibit the delivery to, and the taking of delivery by, any person, at any specified railway station situated in the protected area, of any cotton, the import of which into that area is prohibited when such cotton has been consigned from a railway station not situated in that area, unless such person holds a licence for the import of the cotton into that area.

Refusal to carry unlicensed cotton.

4. (*1*) Notwithstanding anything contained in the Indian Railways Act, 1890, or any other law for the time being in force, the station master of any railway station or any other railway servant responsible for the booking of goods or parcels at that station may refuse to receive for carriage at, or to forward or allow to be carried on the railway from, that station any cotton consigned to a notified station, being cotton of a kind of which the delivery at such notified station has been prohibited unless both stations are in the same protected area, or unless the consignor produces a certified copy of a licence for the import of the cotton into the protected area in which such notified station is situated. IX of 1890.

(*2*) Every certified copy of a licence when so produced shall be attached to the invoice or way-bill, as the case may be, and shall accompany the consignment to its destination, and shall there be dealt with in the prescribed manner.

(*3*) Where by or under any law in force in the territories of any State in India the import into any area, or the delivery at any railway station, of cotton or of any kind of cotton has been prohibited, the Governor General in Council may, by notification in the Gazette of India, declare that the provisions of sub-section (*1*) shall apply in respect of cotton consigned to any such station as if such area and such station were respectively a protected area and a notified station, and as if any licence granted under such law were a licence granted under this Act.

Procedure where cotton arrives at notified station.

5. (*1*) Where any cotton, the import of which into any protected area has been prohibited, has been consigned to and arrives at a notified station in any such protected area, the station master or other railway servant responsible for the receipt and delivery to the consignee of goods or parcels, as the case may be, at that station shall, unless both the notified station and the railway station from which the cotton has been consigned are situated in the same protected area, refuse to deliver the cotton until he is satisfied that the consignee holds a licence for the import of the cotton into the protected area in which such notified station is situated ; and, if he is not so satisfied, or if within fourteen days the consignee or some person acting on his behalf does not appear in order to take delivery shall return the cotton to the railway station from which it was consigned, together with an intimation that delivery of the cotton has been refused or has not been taken, as the case may be.

(*2*) Any station master or other railway servant receiving any cotton returned under sub-section (*1*), or returned with a like intimation from a railway station specified in a notification under sub-section (*3*) of section 4, shall cause to be served on the consignor in any manner authorised by section 141 of the Indian Railways Act, 1890, a notice stating that the cotton has been so returned and requiring the consignor to pay any rate, terminal or other charges due in respect of the carriage of the cotton to and from the railway station to which it was consigned, and such charges shall be deemed to be due from the consignor for all the purposes of section 55 of that Act. IX of 1890.

Penalties.

6. Any person who, in contravention of the provisions of this Act or of any notification or rule made hereunder, knowingly takes delivery of any cotton from a notified station or imports, or attempts to import, any cotton into a protected area, and any station master or other railway servant who, in contravention of the provisions of sub-section *(1)* of section 5, without reasonable excuse, the burden of proving which shall lie upon him, delivers any cotton to a consignee or other person, shall be liable to a fine not exceeding one thousand rupees, and upon any subsequent conviction to imprisonment which may extend to three months, or to fine which may extend to five thousand rupees, or to both.

Power to make rules.

7. *(1)* The Local Government may, by notification in the local official Gazette, make rules to provide for any of the following matters, namely :—

(*a*) the prevention of the import into a protected area by road, river or sea, save under and in accordance with the conditions of a licence, of cotton the import of which into that area has been prohibited by a notification under section 3 ;

(*b*) the terms and conditions to be contained in licences and the authorities by which they may be granted ; and

(*c*) the manner in which licences and certified copies thereof shall be dealt with on and after the delivery of the cotton to which they relate.

(2) Any such rules may provide that any contravention thereof or of the conditions of any licence, not otherwise made punishable by this Act, shall be punishable with fine which may extend to five hundred rupees.

Previous approval of Local Legislature to issue of notifications and rules.

8. No notification under section 3 or rule under section 7 shall be issued by the Local Government of any Governor's Province, unless it has been laid in draft before the Legislative Council of the Province, and has been approved by a resolution of the Legislative Council, either with or without modification or addition, but upon such approval being given the notification or rule, as the case may be, may be issued in the form in which it has been so approved.

Protection for acts done under Act.

9. No suit or other legal proceedings shall be instituted against any person in respect of anything which is in good faith done or intended to be done under this Act.

H. MONCRIEFF SMITH,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

THE following Act of the Indian Legislature received the assent of the Governor General on the 23rd February 1923, and is hereby promulgated for general information :—

ACT No. IV OF 1923.

An Act to amend and consolidate the law relating to the regulation and inspection of mines.

WHEREAS it is expedient to amend and consolidate the law relating to the regulation and inspection of mines; it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Mines Act, 1923.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) It shall come into force on the first day of July, 1924.

Saving of Reg. XII of 1887.

2. Nothing in this Act shall be construed to affect the provisions of the Upper Burma Ruby Regulation, 1887. XII of 1887.

Definition.

3. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "agent," when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act ;

(*b*) "Chief Inspector" means the Chief Inspector of Mines appointed under this Act ;

(*c*) "child" means a person under the age of thirteen years ;

(*d*) a person is said to be "employed" in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental to, or connected with, mining operations ;

(*e*) "Inspector" means an Inspector of Mines appointed under this Act, and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform ;

(*f*) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine :

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of minerals ;

(*g*) "owner," when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

(*h*) "prescribed" means prescribed by regulations, rules or bye-laws;

(*i*) "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such last-mentioned Act is in force, any person declared by the Local Government, by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act; 21 & 22 Vict. c. 90.

(*j*) "regulations," "rules" and "bye-laws" mean respectively regulations, rules and bye-laws made under this Act;

(*k*) "serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days; and

(*l*) "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

CHAPTER II.

INSPECTORS.

Chief Inspector and Inspectors.

4. (*1*) The Governor General in Council may, by notification in the *Gazette of India*, appoint a duly qualified person to be Chief Inspector of Mines for the whole of British India, and duly qualified persons to be Inspectors of Mines subordinate to the Chief Inspector.

(*2*) No person shall be appointed to be Chief Inspector, or an Inspector, or, having been appointed, shall continue to hold such office who is or becomes directly or indirectly interested in any mine or mining rights in India.

(*3*) The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Local Government:

Provided that nothing in this sub-section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by section 19 or section 32.

(*4*) The Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code. XLV of 1860.

Functions of Inspectors.

5. (*1*) The Chief Inspector may, by order in writing, prohibit or restrict the exercise by any Inspector named, or any class of Inspectors specified, in the order of any power conferred on Inspectors by this Act, and shall, subject as aforesaid, declare the local area or areas within which, or the group or class of mines with respect to which, Inspectors shall exercise their respective powers.

(*2*) The Inspector shall give information to owners, agents and managers of mines, situate within the local area or areas or belonging to the group or class of mines, in respect of which

he exercises powers under sub-section (*1*) as to all regulations and rules which concern them respectively and as to the places where copies of such regulations and rules may be obtained.

Powers of Inspectors of Mines.

6. The Chief Inspector and any Inspector may—

(*a*) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder are observed in the case of any mine;

(*b*) with such assistants (if any) as he thinks fit, enter, inspect and examine any mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine;

(*c*) examine into, and make inquiry respecting, the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine and all matters and things connected with or relating to the safety of the persons employed in the mine.

Powers of special officer to enter, measure, etc.

7. Any person in the service of the Government duly authorised by a special order in writing of the Chief Inspector or of an Inspector in this behalf may, for the purpose of surveying, levelling or measuring in any mine, after giving not less than three days' notice to the manager of such mine, enter the mine and may survey, level or measure the mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine.

Facilities to be afforded to inspectors.

8. Every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 7 all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under this Act.

Secrecy of formation obtained.

9. (*1*) All copies of, and extracts from, registers or other records appertaining to any mine, and all other information acquired by the Chief Inspector or an Inspector or by any one assisting him, in the course of the inspection of any mine under this Act or acquired by any person authorised under section 7 in the exercise of his duties thereunder, shall be regarded as confidential.

(*2*) If the Chief Inspector, or an Inspector or any other person referred to in sub-section(*1*) discloses to any one, other than a Magistrate or an officer to whom he is subordinate, any such information as aforesaid without the consent of the Governor General in Council or of the Local Government, he shall be guilty of a breach of official trust, and shall be punishable in the manner provided by section 4 of the Indian Official Secrets Act, 1889. XV of 1889.

(*3*) No Court shall proceed to the trial of any offence under this section except on complaint made by order of, or under authority from, the Governor General in Council or the Local Government, or made by a person aggrieved by the offence.

CHAPTER III.

MINING BOARDS AND COMMITTEES.

Mining Boards.

10. (*1*) The Local Government may constitute for the province, or for any part of the province, or for any group or class of mines in the province, a Mining Board consisting of—

(*a*) a person in the service of the Government, not being the Chief Inspector or an Inspector, nominated by the Local Government to act as chairman;

(*b*) the Chief Inspector or an Inspector;

(c) two persons, neither of whom shall be the Chief Inspector or an Inspector nominated by the Local Government, of whom one shall be a person qualified to represent the interests of persons employed in mines;

(d) two persons nominated by owners of mines or their representatives in such manner as may be prescribed.

(2) The chairman shall appoint a person to act as secretary to the Board.

(3) The Local Government may give directions as to the payment of travelling expenses incurred by the secretary or any member of any such Mining Board in the performance of his duty as such secretary or member.

Committees

11. (1) Where under this Act any question relating to a mine is referred to a Committee, the Committee shall consist of—

(a) chairman nominated by the Local Government or by such officer or authority as the Local Government may authorise in this behalf;

(b) a person nominated by the chairman and qualified by experience to dispose of the question referred to the Committee; and

(c) two persons of whom one shall be nominated by the owner, agent or manager of the mine concerned, and the other shall be nominated by the Local Government to represent the interests of the persons employed in the mine.

(2) No Inspector or person employed in or in the management of any mine concerned shall serve as chairman or member of a Committee appointed under this section.

(3) Where an owner, agent or manager fails to exercise his power of nomination under clause (c) of sub-section (1), the Committee may, notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it.

(4) The Committee shall hear and record such information as the Chief Inspector or the Inspector, or the owner, agent or manager of the mine concerned, may place before it, and shall intimate its decision to the Chief Inspector or the Inspector and to the owner, agent or manager of the mine, and shall report its decision to the Local Government.

(5) On receiving such report the Local Government shall pass orders in conformity therewith unless the Chief Inspector or the owner, agent or manager of the mine has lodged an objection to the decision of the Commitee, in which case the Local Government may proceed to review such decision and to pass such orders in the matter as it may think fit. If an objection is lodged by the Chief Inspector, notice of the same shall forthwith be given to the owner, agent or manager of the mine.

(6) The Local Government may give directions as to the remuneration, if any, to be paid to the members of the Committee or any of them, and as to the payment of the expenses of the inquiry including such remuneration.

Powers of Mining Boards.

12. (1) Any Mining Board constituted under section 10 and any Committee constituted under section 11 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to it.

(2) Every Mining Board constituted under section 10 and every Committee appointed under section 11 shall have the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by any such Mining Board or Committee to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

V of 1908

XLV of 1860.

Recovery of expenses.

13. The Local Government may direct that the expenses of any inquiry conducted by a Mining Board constituted under section 10 or by a Committee appointed under section 11 shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector to a Magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any moveable property within the limits of the Magistrate's jurisdiction belonging to such owner, agent or manager.

CHAPTER IV.

MINING OPERATIONS AND MANAGEMENT OF MINES.

Notice to be given of mining operations.

14. The owner, agent or manager of a mine shall, in the case of an existing mine within one month from the commencement of this Act, or, in the case of a new mine, within three months after the commencement of mining operations, give to the District Magistrate of the district in which the mine is situated notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

Managers.

15. (*1*) Save as may be otherwise prescribed, every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications, to be such manager.

(*2*) If any mine is worked without there being a manager for the mine as required by sub-section (*1*), the owner and agent shall each be deemed to have contravened the provisions of this section.

Duties and responsibilities of owners, agents and managers.

16. (*1*) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder.

(*2*) In the event of any contravention of any such provisions by any person whomsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention:

Provided that the owner or agent shall not be so deemed if he proves—

(*a*) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mine; and

(*b*) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties; and

(*c*) that the offence was committed without his knowledge, consent or connivance.

(*3*) Save as hereinbefore provided, it shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act.

CHAPTER V.

PROVISIONS AS TO HEALH AND SAFETY.

Conservancy.

17. There shall be provided and maintained for every mine latrine and urinal accommodation of such kind and on such scale, and such supply of water fit for drinking, as may be prescribed.

Medical appliances.

18. At every mine in respect of which the Local Government may, by notification in the local official Gazette, declare this section to apply, such supply of ambulances or stretchers, and of splints, bandages and other medical requirements, as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order.

Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous.

19. (*1*) If, in any respect which is not provided against by any express provision of this Act or of the regulations, rules or bye-laws or of any orders made thereunder, it appears to the Chief Inspector or the Inspector that any mine, or any part thereof or any matter, thing or practice in or connected with the mine, or with the control, management or direction thereof, is dangerous to human life or safety, or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time as he may specify in the notice.

(*2*) If the Chief Inspector or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(*3*) Where an order has been made under sub-section (*2*) by an Inspector, the owner, agent or manager of the mine may, within ten days after the receipt of the order, appeal against the same to the Chief Inspector who may confirm, modify or cancel the order.

(*4*) The Chief Inspector or the Inspector making a requisition under sub-section (*1*) or an order under sub-section (*2*), and the Chief Inspector making an order (other than an order of cancellation) in appeal under sub-section (*3*), shall forthwith report the same to the Local Government and shall inform the owner, agent or manager of the mine that such report has been so made.

(*5*) If the owner, agent or manager of the mine objects to a requisition made under sub-section (*1*) or to an order made by the Chief Inspector under sub-section (*2*), or sub-section (*3*), he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision of the appeal, as the case may be, send his objection in writing, stating the grounds thereof, to the Local Government, which shall refer the same to a Committee.

(*6*) Every requisition made under sub-section (*1*), or order made under sub-section (*2*), or sub-section (*3*) to which objection is made under sub-section (*5*), shall be complied with pending the receipt at the mine of the decision of the Committee:

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a requisition under sub-section (*1*) pending its decision on the objection.

(*7*) Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1898. V of 1898.

Notice to be given of accidents.

20. When any accident occurs in or about a mine causing loss of life or serious bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water occurs in or about a mine, the owner, agent or manager of the mine shall give such notice of the occurrence to such authorities, and in such form, and within such time, as may be prescribed.

Power of Government to appoint court of inquiry in cases of accidents.

21. (*1*) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in or about any mine, the Local Government, if it is of opinion that a formal inquiry into the causes of, and circumstances attending, the accident ought to be held, may appoint a competent person to hold such inquiry, and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

(*2*) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

V of 1908.

XLV of 1860.

(*3*) Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(*4*) The person holding an inquiry under this section shall make a report to the Local Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

Publication of reports.

22. The Local Government may cause any report submitted by a Committee under section 11 or by a court of inquiry under section 21 to be published at such time and in such manner as it may think fit.

CHAPTER VI.

HOURS AND LIMITATION OF EMPLOYMENT.

Hours of employment.

23. No person shall be employed in a mine—

(*a*) on more than six days in any one week,

(*b*) if he works above ground, for more than sixty hours in any one week,

(*c*) if he works below ground, for more than fifty-four hours in any one week.

Supervising staff.

24. Nothing in section 23 shall apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity.

Exemption from provisions regarding employment.

25. In case of an emergency involving serious risk to the safety of the mine or of persons employed therein, the manager may, subject to the provisions of section 19, permit persons to be employed in contravention of section 23 on such work as may be necessary to protect the safety of the mine or of the persons employed therein:

Provided that, where such occasion arises, a record of the fact shall immediately be made by the manager and shall be placed before the Chief Inspector or the Inspector at his next inspection of the mine.

Children.

26. No child shall be employed in a mine, or be allowed to be present in any part of a mine which is below ground.

Disputes as to age.

27. (*1*) If any question arises between the Chief Inspector or the Inspector and the manager of any mine as to whether any person is a child, the question shall, in the absence of a certificate as to the age of such person granted in the prescribed manner, be referred by the Chief Inspector or the Inspector for decision to a qualified medical practitioner.

(*2*) Every certificate as to the age of a person which has been granted in the prescribed manner and any certificate granted by a qualified medical practitioner on a reference under sub-section (*1*) shall, for the purposes of this Act, be conclusive evidence as to the age of the person to whom it relates.

Register of employees.

28. For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine, of their hours of work, of their days of rest, and of the nature of their respective employments.

CHAPTER VII.

REGULATIONS, RULES AND BYE-LAWS.

Power of Governor General in Council to make regulations.

29. The Governor General in Council may, by notification in the Gazette of India, make regulations consistent with this Act for all or any of the following purposes, namely :—

(a) for prescribing the qualifications to be required by a person for appointment as Chief Inspector or Inspector ;

(b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act ;

(c) for prescribing the duties of owners, agents and managers of mines and of persons acting under them ;

(d) for prescribing the qualifications of managers of mines and of persons acting under them ;

(e) for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency ;

(f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates ;

(g) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager or for any mine or mines to be under a manager not having the prescribed qualifications ;

(h) for providing for the making of inquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency ;

(i) for regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage and use of explosives ; IV of 1884.

(j) for prohibiting, restricting or regulating the employment in mines or in any class of mines of women either below ground or on particular kinds of labour which are attended by danger to the life, safety or health of such women ;

(k) for providing for the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways and subsidences ;

(l) for providing for the safety of the roads and working places in mines, including the siting and maintenance of pillars and the maintenance of sufficient barriers between mine and mine ;

(m) for providing for the ventilation of mines and the action to be taken in respect of dust and noxious gases ;

(n) for providing for the care, and the regulation of the use, of all machinery and plant and of all electrical apparatus used for signalling purposes ;

(o) for requiring and regulating the use of safety lamps in mines ;

(p) for providing against dangers arising out of the accumulation of water in mines ;

(q) for prescribing the notices of accidents and dangerous occurrences, and the notices, reports and returns of mineral output, persons employed and other matters provided for by regulations, to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the time within which they are to be submitted ;

(*r*) for prescribing the plans to be kept by owners, agents and managers of mines and the manner and places in which such plans are to be kept for purposes of record ;

(*s*) for regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines ;

(*t*) for prescribing the form of, and the particulars to be contained in, the notice to be given by the owner, agent or manager of a mine under section 14 ; and

(*u*) for prescribing the notice to be given by the owner, agent or manager of a mine before mining operations are commenced at or extended to any point within fifty yards of any railway subject to the provisions of the Indian Railways Act, 1890, or of any public work or classes of public works which the Local Government may, by general or special order, specify in this behalf. IX of 1890.

Power of Local Governments to make rules.

30. The Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, make rules consistent with this Act for all or any of the following purposes, namely :—

(*a*) for providing for the appointment of chairmen and members of Mining Boards, and for regulating the procedure of such Boards ;

(*b*) for providing for the appointment of courts of inquiry under section 21, for regulating the procedure and powers of such courts, for the payment of travelling allowance to the members, and for the recovery of the expenses of such courts from the manager, owner or agent of the mine concerned ;

(*c*) for prescribing the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking water, the supply and maintenance of medical appliances and comforts, the formation and training of rescue brigades, and the training of men in ambulance work ;

(*d*) for defining the persons who shall, for the purposes of section 24, be deemed to be persons holding positions of supervision or management or employed in a confidential capacity ;

(*e*) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner to be more than thirteen years of age, and for prescribing the manner and the circumstances in which such certificates may be granted and revoked ;

(*f*) for prescribing the form of register required by section 28 ;

(*g*) for prescribing abstracts of this Act and the vernacular in which the abstracts and the regulations, rules and bye-laws shall be posted as required by sections 32 and 33 ;

(*h*) for requiring the fencing of any mine or part of a mine, whether the same is being worked or not, where such fencing is necessary for the protection of the public ;

(*i*) for the protection from injury, in respect of any mine when the workings are discontinued, of property vested in His Majesty or any local authority or railway company as defined in the Indian Railways Act, 1890 ; IX of 1890.

(*j*) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted ; and

(*k*) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this Act.

Prior publication of regulations and rules.

31. (*1*) The power to make regulations and rules conferred by sections 29 and 30 is subject to the condition of the regulations and rules being made after previous publication.

(*2*) The date to be specified in accordance with clause (*3*) of section 23 of the General Clauses Act, 1897, as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information. X of 1897.

(*3*) Before the draft of any regulation or rule is published under this section it shall be referred in the case of a regulation to every Mining Board constituted in British India, and in the case of a rule to every Mining Board constituted in the province; and the regulation or rule shall not be so published until each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

(*4*) Regulations and rules shall be published in the Gazette of India and the local official Gazette, respectively, and, on such publication, shall have effect as if enacted in this Act.

Bye-laws.

32. (*1*) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector or Inspector, frame and submit to the Chief Inspector or Inspector a draft of such bye-laws, not being inconsistent with this Act or any regulations or rules for the time being in force, for the control and guidance of the persons acting in the management of, or employed in, the mine as such owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine.

(*2*) If any such owner, agent or manager—

(*a*) fails to submit within two months a draft of bye-laws after being called upon to do so by the Chief Inspector or Inspector, or

(*b*) submits a draft of bye-laws which is not in the opinion of the Chief Inspector or Inspector sufficient,

the Chief Inspector or Inspector may—

(*i*) propose a draft of such bye-laws as appear to him to be sufficient, or

(*ii*) propose such amendments in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient,

and shall send such draft bye-laws or draft amendments to the owner, agent or manager, as the case may be, for consideration.

(*3*) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Chief Inspector or Inspector to the owner, agent or manager under the provisions of sub-section (*2*), the Chief Inspector or Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under sub-section (*1*), the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the Mining Board or, where there is no Mining Board, to such officer or authority as the Local Government may, by general or special order, appoint in this behalf.

(*4*) (*a*) When such draft bye-laws have been agreed to by the owner, agent or manager and the Chief Inspector or Inspector, or, when they are unable to agree, have been settled by the Mining Board or such officer or authority as aforesaid, a copy of the draft bye-laws shall be sent by the Chief Inspector or Inspector to the Local Government for approval.

(*b*) The Local Government may make such modifications of the draft bye-laws as it thinks fit.

(c) Before the Local Government approves the draft bye-laws, whether with or without modifications, there shall be published, in such manner as the Local Government may think best adapted for informing the persons affected, notice of the proposal to make the bye-laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days) within which any objections with reference to the draft bye-laws, made by or on behalf of persons affected, should be sent to the Local Government.

(d) Every objection shall be in writing and shall state—

(i) the specific grounds of objection, and

(ii) the omissions, additions or modifications asked for.

(e) The Local Government shall consider any objection made within the required time by or on behalf of persons appearing to it to be affected, and may approve the bye-laws either in the form in which they were published or after making such amendments thereto as it thinks fit.

(5) The bye-laws, when so approved by the Local Government, shall have effect as if enacted in this Act, and the owner, agent or manager of the mine shall cause a copy of the bye-laws, in English and in such vernacular or vernaculars as may be prescribed, to be posted up in some conspicuous place at or near the mine, where the bye-laws may be conveniently read or seen by the persons employed ; and as often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.

(6) The Local Government may, by order in writing, rescind, in whole or in part, any bye-law so made, and thereupon such bye-law shall cease to have effect accordingly.

Posting up of extracts from Act, regulations, etc.

33. There shall be kept posted up at or near every mine in English and in such vernacular or vernaculars as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Obstruction.

34. (1) Whoever obstructs the Chief Inspector, an Inspector or any person authorised under section 7 in the discharge of his duties under this Act, or refuses or wilfully neglects to afford the Chief Inspector, an Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent, any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

Falsification of records, etc.

35. Whoever—

(a) counterfeits, or knowingly makes a false statement in, any certificate, or any official copy of a certificate, granted under this Act, or

(b) knowingly uses as true any such counterfeit or false certificate, or

(c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate, or the renewal of a certificate, under this Act, or any employment in a mine, or

(d) falsifies any plan or register or record the maintenance of which is required by or under this Act, or

(e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true.

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to furnish plans, etc.

36. Any person who, without reasonable excuse the burden of proving which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, return, notice, register, record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to two hundred rupees.

Contravention of provisions regarding employment of labour.

37. Whoever, save as permitted by section 25, contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with fine which may extend to five hundred rupees.

Notice of accidents.

38. Whoever, in contravention of the provisions of section 20, fails to give notice of any accidental occurrence, shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to five hundred rupees, or, if the occurrence results in loss of life, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

Disobedience of orders.

39. Whoever contravenes any provision of this Act or any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction.

Contravention of law with dangerous results.

40. (*1*) Notwithstanding anything hereinbefore contained, whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder, shall be punishable, if such contravention results in loss of life, with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both ; or, if such contravention results in serious bodily injury, with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both ; or, if such contravention otherwise causes injury or danger to workers or other persons in or about the mine, with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

(*2*) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by sub-section (*1*).

(*3*) Any Court imposing, or confirming in appeal, revision or otherwise, a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured, or, in the case of his death, to his legal representative :

Provided that, if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal.

Prosecution owner, agent manager.

41. No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector.

Limitation of prosecutions.

42. No Court shall take cognizance of any offence under this Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed.

Cognizance offences.

43. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

Reference to Mining Board or Committee in lieu of prosecution in certain cases.

44. (*1*) If the Court trying any case instituted at the instance of the Chief Inspector or of the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Mining Board or a Committee, it may stay the criminal proceedings, and report the matter to the Local Government with a view to such reference being made.

(*2*) On receipt of a report under sub-section (*1*), the Local Government may refer the case to a Mining Board or a Committee, or may direct the Court to proceed with the trial.

CHAPTER IX.

MISCELLANEOUS.

Decision of question whether a mine is under this Act.

45. If any question arises as to whether any excavation or working is a mine within the meaning of this Act, the Local Government may decide the question, and a certificate signed by a Secretary to the Local Government shall be conclusive on the point.

Power to exempt from operation of Act.

46. (*1*) The Governor General in Council may, by notification in the Gazette of India, exempt any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any specified provisions of this Act:

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 26 unless it is also exempted from the operation of all the other provisions of this Act.

(*2*) On the occurrence of any public emergency, the Local Government may, by an order in writing, confer any exemption which might be conferred by the Governor General in Council under sub-section (*1*). When such an order is made, a copy thereof shall forthwith be sent to the Governor General in Council.

Power to alter or rescind orders.

47. The Governor General in Council and every Local Government may reverse or modify any order passed under this Act by any authority subject to his or its control, as the case may be.

Application of Act to Crown mines.

48. This Act shall apply to mines belonging to the Crown.

Saving.

49. No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Repeals.

50. On and from the commencement of this Act, the enactments mentioned in the Schedule shall be repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

(*See section 50.*)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal,
1901	VIII	The Indian Mines Act, 1901.	The whole.
1914	IV	The Decentralisation Act, 1914.	So much of the Schedule as relates to the Indian Mines Act, 1901.
"	X	The Repealing and Amending Act, 1914.	So much of the Second Schedule as relates to the Indian Mines Act, 1901.

H. MONCRIEFF SMITH,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 23rd February, 1923, and is hereby promulgated for general information :—

ACT NO. V OF 1923.

An Act to consolidate and amend the law relating to steam-boilers.

WHEREAS it is expedient to consolidate and amend the law relating to steam-boilers ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Boilers Act, 1923.

(*2*) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "accident" means an explosion of a boiler or steam-pipe or any damage to a boiler or steam-pipe which is calculated to weaken the strength thereof so as to render it liable to explode ;

(*b*) "boiler" means any closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure for use outside such vessel, and includes any mounting or other fitting attached to such vessel which is wholly or partly under pressure when steam is shut off ;

(*c*) "Chief Inspector" and "Inspector" mean, respectively, a person appointed to be a Chief Inspector and an Inspector under this Act ;

(*d*) "owner" includes any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof ;

(*e*) "prescribed" means prescribed by regulations or rules made under this Act ;

(*f*) "steam-pipe" means any main pipe exceeding three inches in internal diameter through which steam passes directly from a boiler to a prime-mover or other first user, and includes any connected fitting of a steam-pipe ; and

(*g*) "structural alteration, addition or renewal" shall not be deemed to include any renewal or replacement of a petty nature when the part or fitting use for replacement is not inferior in strength, efficiency or otherwise to the replaced part or fitting.

Limitation of application.

3. (*1*) Nothing in this Act shall apply in the case of any boiler or steam-pipe—

(*a*) in any steam-ship as defined in section 3 of the Indian Steam-ships Act, 1884, or in any steam-vessel as defined in section 2 of the Inland Steam-vessels Act, 1917 ; or VII of 1884. I of 1917.

(*b*) belonging to or under the control of His Majesty's Navy or the Royal Indian Marine Service.

(*2*) The Governor General in Council may, by notification in the Gazette of India, declare that the provisions of this Act shall not apply in the case of boilers or steam-pipes, or of any specified class of boilers or steam-pipes, belonging to or under the control of any railway administered by the Government or by any railway company as defined in clause (*5*) of section 3 of the Indian Railways Act, 1890. IX of 1890.

Power to limit extent.

4. The Governor General in Council may, by notification in the Gazette of India, exclude any specified area from the operation of all or any specified provisions of this Act.

Appointment of Chief Inspectors and Inspectors.

5. (1) The Local Government may appoint such persons as it thinks fit to be Inspectors for the province for the purposes of this Act, and may define the local limits within which each Inspector shall exercise the powers and perform the duties conferred and imposed on Inspectors by or under this Act.

(2) The Local Government shall likewise appoint a person to be Chief Inspector for the province, who may, in addition to the powers and duties conferred or imposed on the Chief Inspector by or under this Act, exercise any power or perform any duty so conferred or imposed on Inspectors.

(3) Every Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code. XLV of 1860.

Prohibition of use of unregistered or uncertificated boiler.

6. Save as otherwise expressly provided in this Act, no owner of a boiler shall use the boiler or permit it to be used—

(a) unless it has been registered in accordance with the provisions of this Act;
(b) in the case of any boiler which has been transferred from one province to another, until the transfer has been reported in the prescribed manner;
(c) unless a certificate or provisional order authorising the use of the boiler is for the time being in force under this Act;
(d) at a pressure higher than the maximum pressure recorded in such certificate or provisional order;
(e) where the Local Government has made rules requiring that boilers shall be in charge of persons holding certificates of competency, unless the boiler is in charge of a person holding the certificate required by such rules:

Provided that any boiler registered, or any boiler certified or licensed, under any Act hereby repealed shall be deemed to have been registered or certified, as the case may be, under this Act:

Provided, further, that, until the expiration of twelve months from the commencement of this Act, nothing in this section shall be deemed to prohibit the use of any boiler in any local area in which the registration of, or a certificate or licence for the use of, a boiler was not previously required by law.

Registration.

7. (1) The owner of any boiler which is not registered under the provisions of this Act may apply to the Inspector to have the boiler registered. Every such application shall be accompanied by the prescribed fee.

(2) On receipt of an application under sub-section (1), the Inspector shall fix a date, within thirty days or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed.

(3) On the said date the Inspector shall proceed to measure and examine the boiler and to determine in the prescribed manner the maximum pressure, if any, at which such boiler may be used, and shall report the result of the examination to the Chief Inspector in the prescribed form.

(4) The Chief Inspector, on receipt of the report, may—

(a) register the boiler and assign a register number thereto either forthwith or after satisfying himself that any structural alteration, addition or renewal which he may deem necessary has been made in or to the boiler or any steam-pipe attached thereto, or

(b) refuse to register the boiler:

Provided that where the Chief Inspector refuses to register a boiler, he shall forthwith communicate his refusal to the owner of the boiler together with the reasons therefor.

(5) The Chief Inspector shall, on registering the boiler, order the issue to the owner of a certificate in the prescribed form authorising the use of the boiler for a period not exceeding twelve months at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act.

(6) The Inspector shall forthwith convey to the owner of the boiler the orders of the Chief Inspector and shall in accordance therewith issue to the owner any certificate of which the issue has been ordered, and, where the boiler has been registered, the owner shall within the prescribed period cause the register number to be permanently marked thereon in the prescribed manner.

Renewal of certificate.

8. (1) A certificate authorising the use of a boiler shall cease to be in force—

(a) on expiry of the period for which it was granted ; or
(b) when any accident occurs to the boiler ; or
(c) when the boiler is moved, the boiler not being a vertical boiler the heating surface of which is less than two hundred square feet, or a portable or vehicular boiler ; or
(d) when any structural alteration, addition or renewal is made in or to the boiler ; or
(e) if the Chief Inspector in any particular case so directs, when any structural alteration, addition or renewal is made in or to any steam-pipe attached to the boiler ; or
(f) on the communication to the owner of the boiler of an order of the Chief Inspector or Inspector prohibiting its use on the ground that it or any steam-pipe attached thereto is in a dangerous condition.

(2) Where an order is made under clause (f) of sub-section (1), the grounds on which the order is made shall be communicated to the owner with the order.

(3) When a certificate ceases to be in force, the owner of the boiler may apply to the Inspector for a renewal thereof for such period not exceeding twelve months as he may specify in the application.

(4) An application under sub section (3) shall be accompanied by the prescribed fee and, on receipt thereof, the Inspector shall fix a date, within thirty days or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed :

Provided that, where the certificate has ceased to be in force owing to the making of any structural alteration, addition or renewal, the Chief Inspector may dispense with the payment of any fee.

(5) On the said date the Inspector shall examine the boiler in the prescribed manner, and if he is satisfied that the boiler and the steam-pipe or steam-pipes attached thereto are in good condition shall issue a renewed certificate authorising the use of the boiler for such period not exceeding twelve months and at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act :

Provided that if the Inspector—

(a) proposes to issue any certificate—
(i) having validity for a less period than the period entered in the application, or
(ii) increasing or reducing the maximum pressure at which the boiler may be used, or

(b) proposes to order any structural alteration, addition or renewal to be made in or to the boiler or any steam-pipe attached thereto, or

(c) is of opinion that the boiler is not fit for use,

the Inspector shall, within forty-eight hours of making the examination, inform the owner of the boiler in writing of his opinion and the reasons therefor, and shall forthwith report the case for orders to the Chief Inspector.

(6) The Chief Inspector, on receipt of a report under sub-section (5), may, subject to the provisions of this Act and of the regulations made hereunder, order the renewal of the certificate in such terms and on such conditions, if any, as he thinks fit; or may refuse to renew it :

Provided that where the Chief Inspector refuses to renew a certificate, he shall forthwith communicate his refusal to the owner of the boiler, together with the reasons therefor.

(7) Nothing in this section shall be deemed to prevent an owner of a boiler from applying for a renewed certificate therefor at any time during the currency of a certificate.

Provisional orders.

9. Where the Inspector reports the case of any boiler to the Chief Inspector under sub-section (3) of section 7 or sub-section (5) of section 8, he may, if the boiler is not a boiler the use of which has been prohibited under clause (*f*) of sub-section (1) of section 8, grant to the owner thereof a provisional order in writing permitting the boiler to be used at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act, pending the receipt of the orders of the Chief Inspector. Such provisional order shall cease to be in force—

(*a*) on the expiry of six months from the date on which it is granted, or

(*b*) on receipt of the orders of the Chief Inspector, or

(*c*) in any of the cases referred to in clauses (*b*), (*c*), (*d*), (*e*) and (*f*) of sub-section (1) of section 8,

and on so ceasing to be in force shall be surrendered to the Inspector.

Use of boiler pending grant of certificate.

10. (1) Notwithstanding anything hereinbefore contained, when the period of a certificate relating to a boiler has expired, the owner shall, provided that he has applied before the expiry of that period for a renewal of the certificate, be entitled to use the boiler at the maximum pressure entered in the former certificate pending the issue of orders on the application.

(2) Nothing in sub-section (1) shall be deemed to authorise the use of a boiler in any of the cases referred to in clauses (*b*), (*c*), (*d*), (*e*), and (*f*) of sub-section (1) of section 8 occurring after the expiry of the period of the certificate.

Revocation of certificate or provisional order.

11. The Chief Inspector may at any time withdraw or revoke any certificate or provisional order on the report of an Inspector or otherwise—

(*a*) if there is reason to believe that the certificate or provisional order has been fraudulently obtained or has been granted erroneously or without sufficient examination; or

(*b*) if the boiler in respect of which it has been granted has sustained injury or has ceased to be in good condition; or

(*c*) where the Local Government has made rules requiring that boilers shall be in charge of persons holding certificates of competency, if the boiler is in charge of a person not holding the certificate required by such rules; or

(*d*) where no such rules have been made, if the boiler is in charge of a person who is not, having regard to the condition of the boiler, in the opinion of the Chief Inspector competent to have charge thereof:

Provided that where the Chief Inspector withdraws or revokes a certificate or provisional order on the ground specified in clause (*d*), he shall communicate to the owner of the boiler his reasons in writing for the withdrawal or revocation, and the order shall not take effect until the expiry of thirty days from the receipt of such communication.

Alterations and renewals to boilers.

12. No structural alteration, addition or renewal shall be made in or to any boiler registered under this Act unless such alteration, addition or renewal has been sanctioned in writing by the Chief Inspector.

Alterations and renewals to steam-pipes.

13. Before the owner of any boiler registered under this Act makes any structural alteration, addition or renewal in or to any steam-pipe attached to the boiler, he shall transmit to the Chief Inspector a report in writing of his intention, and shall send therewith such particulars of the proposed alteration, addition, or renewal as may be prescribed.

Duty of owner at examination.

14. (*1*) On any date fixed under this Act for the examination of a boiler, the owner thereof shall be bound—

(*a*) to afford to the Inspector all reasonable facilities for the examination and all such information as may reasonably be required of him;

(*b*) to have the boiler properly prepared and ready for examination in the prescribed manner; and

(*c*) in the case of an application for the registration of a boiler, to provide such drawings, specifications, certificates, and other particulars as may be prescribed.

(*2*) If the owner fails, without reasonable cause, to comply with the provisions of sub-section (*1*), the Inspector shall refuse to make the examination and shall report the case to the Chief Inspector who shall, unless sufficient cause to the contrary is shown, require the owner to file a fresh application under section 7 or section 8, as the case may be, and may forbid him to use the boiler notwithstanding anything contained in section 10.

Production of certificates, etc.

15. The owner of any boiler who holds a certificate or provisional order relating thereto shall, at all reasonable times during the period for which the certificate or order is in force, be bound to produce the same when called upon to do so by a District Magistrate, Commissioner of Police or Magistrate of the first class having jurisdiction in the area in which the boiler is for the time being, or by the Chief Inspector or by an Inspector or by any Inspector appointed under the Indian Factories Act, 1911, or by any person specially authorised in writing by a District Magistrate or Commissioner of Police. XII of 1911.

Transfer of certificates, etc.

16. If any person becomes the owner of a boiler during the period for which a certificate or provisional order relating thereto is in force, the preceding owner shall be bound to make over to him the certificate or provisional order.

Power of entry.

17. An Inspector may, for the purpose of inspecting or examining a boiler or any steam-pipe attached thereto or of seeing that any provision of this Act or of any regulation or rule made hereunder has been or is being observed, at all reasonable times enter any place or building within the limits of the area for which he has been appointed in which he has reason to believe that a boiler is in use.

Report of accidents.

18. (*1*) If any accident occurs to a boiler or steam-pipe, the owner or person in charge thereof shall, within twenty-four hours of the accident, report the same in writing to the Inspector. Every such report shall contain a true description of the nature of the accident and of the injury, if any, caused thereby to the boiler or to the steam-pipe or to any person, and shall be in sufficient detail to enable the Inspector to judge of the gravity of the accident.

(*2*) Every person shall be bound to answer truly to the best of his knowledge and ability every question put to him in writing by the Inspector as to the cause, nature or extent of the accident.

Appeals to Chief Inspector.

19. Any person considering himself aggrieved by—

(*a*) an order made or purporting to be made by an Inspector in the exercise of any power conferred by or under this Act, or

(*b*) a refusal of an Inspector to make any order or to issue any certificate which he is required or enabled by or under this Act to make or issue,

may, within thirty days from the date on which such order or refusal is communicated to him, appeal against the order or refusal to the Chief Inspector.

Appeals to appellate authority.

20. Any person considering himself aggrieved by an original or appellate order of the Chief Inspector—

(*a*) refusing to register a boiler or to grant or renew a certificate in respect of a boiler ; or

(*b*) refusing to grant a certificate having validity for the full period applied for ; or

(*c*) refusing to grant a certificate authorising the use of a boiler at the maximum pressure desired ; or

(*d*) withdrawing or revoking a certificate or provisional order ; or

(*e*) reducing the amount of pressure specified in any certificate or the period for which such certificate has been granted ; or

(*f*) ordering any structural alteration, addition or renewal to be made in or to a boiler or steam-pipe, or refusing sanction to the making of any structural alteration, addition or renewal in or to a boiler,

may, within thirty days of the communication to him of such order, lodge with the Chief Inspector an appeal to an appellate authority to be constituted by the Local Government under this Act.

Finality of orders.

21. An order of an appellate authority under section 20, and save as otherwise provided in sections 19 and 20, an order of the Chief Inspector or of an Inspector shall be final and shall not be called in question in any Court.

Minor penalties.

22. Any owner of a boiler who refuses or without reasonable excuse neglects—

(*i*) to surrender a provisional order as required by section 9, or

(*ii*) to produce a certificate or provisional order when duly called upon to do so under section 15, or

(*iii*) to make over to the new owner of a boiler a certificate or provisional order as required by section 16,

shall be punishable with fine which may extend to one hundred rupees.

Penalties of illegal use of boiler

23. Any owner of a boiler who, in any case which a certificate or provisional order is required for the use of the boiler under this Act, uses the boiler either without any such certificate or order being in force or at a higher pressure than that allowed thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to one hundred rupees for each day after the first day in regard to which he is convicted of having persisted in the offence.

Other penalties.

24. Any person who—

(*a*) uses or permits to be used a boiler of which he is the owner and which has been transferred from one province to another without such transfer having been reported as required by section 6, or

(*b*) being the owner of a boiler fails to cause the register number allotted to the boiler under this Act to be marked on the boiler as required by sub-section (*6*) of section 7, or

(*c*) makes any structural alteration, addition or renewal in or to a boiler without first obtaining the sanction of the Chief Inspector when so required by section 12, or to a steam-pipe without first informing the Chief Inspector, when so required by section 13, or

(*d*) fails to report an accident to a boiler or steam-pipe when so required by section 18, or

(*e*) tampers with a safety valve of a boiler so as to render it inoperative at the maximum pressure at which the use of the boiler is authorised under this Act,

shall be punishable with fine which may extend to five hundred rupees.

Penalty for tampering with register mark.

25. (*1*) Whoever removes, alters, defaces, renders invisible or otherwise tampers with the register number marked on a boiler in accordance with the provisions of this Act or any Act repealed hereby, shall be punishable with fine which may extend to five hundred rupees.

(*2*) Whoever fraudulently marks upon a boiler a register number which has not been allotted to it under this Act or any Act repealed hereby, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

Limitation and previous sanction for prosecutions.

26. No prosecution for an offence made punishable by or under this Act shall be instituted except within six months from the date of the commission of the offence, and no such prosecution shall be instituted without the previous sanction of the Chief Inspector.

Trial of offences.

27. No offence made punishable by or under this Act shall be tried by a Court inferior to that of a Presidency Magistrate or a Magistrate of the first class.

Power to make regulations.

28. The Governor General in Council may, by notification in the Gazette of India, make regulations consistent with this Act for all or any of the following purposes, namely :—

(*a*) for laying down the standard conditions in respect of material, design and construction which shall be required for the purpose of enabling the registration and certification of a boiler under this Act ;

(*b*) for prescribing the method of determining the maximum pressure at which a boiler may be used ;

(*c*) for regulating the registration of the boilers, prescribing the fees payable therefor, the drawings, specifications, certificates and particulars to be produced by the owner, the method of preparing a boiler for examination, the form of the Inspector's report thereon, the method of marking the register number and the period within which such number is to be marked on the boiler ;

(*d*) for regulating the inspection and examination of boilers and steam-pipes, and prescribing forms of certificates therefor ;

(*e*) for ensuring the safety of persons working inside a boiler ; and

(*f*) for providing for any other matter which is not, in the opinion of the Governor General in Council, a matter of merely local or provincial importance.

Power to make rules.

29. The Local Government may, by notification in the local official Gazette, make rules consistent with this Act and the regulations made thereunder for all or any of the following purposes, namely :—

(*a*) for prescribing the qualifications and duties of the Chief Inspector and of Inspectors, for regulating their salary, allowances and conditions of service, for prescribing or constituting authorities to which they shall respectively be subordinate, and the limits of the administrative control to be exercised by such authorities ;

(*b*) for regulating the transfer of boilers ;

(*c*) for providing for the registration and certification of boilers in accordance with the regulations made under this Act ;

(*d*) for requiring boilers to be in charge of persons holding certificates of competency, and for prescribing the conditions on which such certificates may be granted ;

(*e*) for prescribing the times within which Inspectors shall be required to examine boilers under section 7 or section 8 ;

(*f*) for prescribing the fees payable for the issue of renewed certificates and the method of determining the amount of such fees in each case ;

(*g*) for regulating inquiries into accidents ;
(*h*) for constituting the appellate authority referred to in section 20, and for determining its powers and procedure ;
(*i*) for determining the mode of disposal of fees, costs and penalties levied under this Act ; and
(*j*) generally to provide for any matter which is, in the opinion of the Local Government, a matter of merely local importance in the province :

Provided that the previous sanction of the Governor General in Council shall be required to the making of any rule under clause (*j*).

Penalty for breach of rules.

30. Any regulation or rule made under section 28 or section 29 may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

Publication of regulations and rules.

31. (*1*) The power to make regulations and rules conferred by sections 28 and 29 shall be subject to the condition of the regulations and rules being made after previous publication.

(*2*) Regulations and rules so made shall be published in the Gazette of India and the local official Gazette, respectively, and, on such publication, shall have effect as if enacted in this Act.

Recovery of fees, etc.

32. All fees, costs and penalties levied under this Act shall be recoverable as arrears of land-revenue.

Applicability to the Crown.

33. Save as otherwise expressly provided, this Act shall apply to boilers and steam-pipes belonging to the Crown.

Power to suspend in case of emergency.

34. In case of any emergency, the Local Government may, by general or special order in writing, exempt any boiler or steam-pipe from the operation of all or any of the provisions of this Act.

Repeal of enactments.

35. On and from the commencement of this Act, the enactments mentioned in the Schedule shall be repealed to the extent specified in the fourth column thereof :

Provided that any Chief Inspector or Inspector appointed under any Act so repealed shall be deemed to have been appointed under this Act.

THE SCHEDULE.

(*See section 35.*)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
		Acts of the Governor General in Council.	
1903	1	The Amending Act, 1903	So much of the First Schedule as relates to the Bengal Steam-boilers and Prime-movers Act, 1879.
1920	XXXVIII	The Devolution Act, 1920	So much of the First Schedule as relates to the Bengal Steam-boilers and Prime-movers Act, 1879.

Year.	No.	Short title.	Extent of repeal.
		Madras Acts.	
1893	III	The Madras Steam-boilers and Prime-movers Act, 1893.	The whole.
1904	I	The Madras Steam-boilers and Prime-movers (Amendment) Act, 1904.	The whole.
1909	VII	The Madras Steam-boilers and Prime-movers (Amendment) Act, 1909.	The whole.
		Bombay Acts.	
1917	V	The Bombay Boiler Inspection Act, 1917	The whole.
1920	X	The Bombay Boiler Inspection (Amendment) Act, 1920.	The whole.
		Bengal Acts.	
1879	III	The Bengal Steam-boilers and Prime-movers Act, 1879.	The whole.
1915	II	The Bengal Steam-boilers and Prime-movers (Amendment) Act, 1915.	The whole.
		United Provinces Act.	
1915	III	The United Provinces Steam boilers Act, 1915.	The whole.
		Punjab Act.	
1902	II	The Punjab Steam-boilers and Prime-movers Act, 1902.	The whole.
		Central Provinces Acts.	
1907	II	The Central Provinces Boiler Inspection Act, 1907.	The whole.
1919	IV	The Central Provinces Boiler Inspection (Amendment) Act, 1919.	The whole.
		Burma Act.	
1910	II	The Burma Steam-boilers and Prime-movers Act, 1910.	The whole.

H. MONCRIEFF SMITH,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 5th March, 1923, and is hereby promulgated for general information :—

ACT NO. VIII OF 1923.

An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Workmen's Compensation Act, 1923.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) It shall come into force on the first day of July, 1924.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years ;

(*b*) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20 ;

(*c*) "compensation" means compensation as provided for by this Act ;

(*d*) "dependant" means any of the following relatives of a deceased workman, namely, a wife, husband, parent, minor son, unmarried daughter, married daughter, who is a minor, minor brother or unmarried sister, and includes the minor children of a deceased son of the workman and, where no parent of the workman is alive, a paternal grandparent ;

(*e*) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him ;

(*f*) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer ;

(*g*) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement ;

(*h*) "prescribed" means prescribed by rules made under this Act;

(*i*) "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same, or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the Local Government, by notification in the local official Gazette, to be a qualified medical practitioner for the purpose of this Act; 21 & 22 Vict. c. 90.

(*j*) "registered ship" means any sea going ship registered under the Bombay Coasting Vessels Act, 1838, or the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or any home trade ship so registered of a registered tonnage of not less than three hundred tons, or any inland steam-vessel as defined in section 2 of the Inland Steam Vessels Act, 1917, of a registered tonnage of not less than one hundred tons; XIX of 1838 X of 1841. XI of 1850 I of 1917.

(*k*) "seaman" means any person forming part of the crew of any registered ship, but does not include the master of any such ship;

(*l*) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent;

(*m*) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(*n*) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(*i*) a railway servant as defined in section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or IX of 1890.

(*ii*) employed, either by way of manual labour or on monthly wages not exceeding three hundred rupees, in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of His Majesty's naval, military or air forces or of the Royal Indian Marine Service; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(*2*) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The Governor General in Council after giving, by notification in the Gazette of India, not less than three months' notice of his intention so to do, may, by a like notification, direct that the provisions of this Act shall apply in the case of any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is employed by way of manual labour or on monthly wages not exceeding three hundred rupees in any occupation declared by such notification to be a hazardous occupation, or that the said provisions shall apply in the case of any specified class of such persons or in the case of any such person or class to whom any specified injury is caused; and any person in whose case the said provisions are so made applicable shall be deemed to be a workman within the meaning of this Act.

CHAPTER II.

WORKMEN'S COMPENSATION.

Employer's liability for compensation.

3. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter;

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding ten days;

(b) in respect of any injury to a workman resulting from an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or

(c) except in the case of death or permanent total disablement, in respect of any workman employed in the construction, repair or demolition of a building or bridge.

(2) If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax, or if a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.—For the purposes of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer.

(3) The Governor General in Council, after giving, by notification in the Gazette of India, not less than three months' notice of his intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is solely and directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Amount of compensation.

4. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—

A. Where death results from the injury—

(i) in the case of an adult, a sum equal to thirty months' wages or two thousand five hundred rupees, whichever is less, and

(ii) in the case of a minor, two hundred rupees;

B. Where permanent total disablement results from the injury—

(i) in the case of an adult, a sum equal to forty-two months' wages or three thousand five hundred rupees, whichever is less; and

(ii) in the case of a minor, a sum equal to eighty-four months' wages or three thousand five hundred rupees, whichever is less;

C. Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in Schedule I such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury;

Explanation.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of ten days from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter,—

(i) in the case of an adult, of fifteen rupees or a sum equal to one-fourth of his monthly wages, whichever is less, and

(ii) in the case of a minor, of a sum equal to one-third or, after he has attained the age of fifteen years, to one-half of his monthly wages, but not exceeding in any case fifteen rupees:

Provided that there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

Method of calculating wages.

5. For the purposes of section 4 the monthly wages of a workman shall be calculated as follows, namely :—

(a) Where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period ;

(b) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period :

Provided that the sum arrived at by a calculation under clause (a) or clause (b) shall be increased or decreased, as the case may be, to the amount specified in the second column of Schedule IV against the head specified in the first column thereof within the limits of which such sum is included.

Explanation.—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Review.

6. (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

Commutation of half-monthly payments.

7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

Distribution of compensation.

8. (1) Compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the Commissioner, and any sum so deposited shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one such dependant, and the sum so allotted to any

dependant shall be paid to him or, if he is a person under any legal disability, be invested, applied or otherwise dealt with for his benefit during such disability in such manner as the Commissioner thinks fit.

(2) Any other compensation payable under this Act may be deposited with the Commissioner and, when so deposited, shall be paid by the Commissioner to the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any amount deposited with him under sub-section (1) or sub-section (2).

(4) On the deposit of any money under sub-section (1), the Commissioner may deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding fifty rupees, and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Where a half-monthly payment is payable under this Act to a person under any legal disability, the Commissioner may, of his own motion or on application made to him in this behalf, order that the half-monthly payment be paid during the disability to any dependant of the workman or to any other person whom he thinks best fitted to provide for the welfare of the workman.

(6) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

Compensation not to be assigned, attached or charged.

9. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Notice and claim.

10. (1) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within six months of the occurrence of the accident or, in case of death, within six months from the date of death :

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease;

Provided, further that the Commissioner may admit and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be, was due to sufficient cause.

(*2*) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one or several employers, or upon any person directly responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(*3*) The notice may be served by delivering the same at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served.

Medical examination.

11. (*1*) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time:

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(*2*) If a workman, on being required to do so by the employer under sub-section (*1*) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal, or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(*3*) If a workman, before the expiry of the period within which he is liable under sub-section (*1*) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(*4*) Where a workman, whose right to compensation has been suspended under sub-section (*2*) or sub-section (*3*), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(*5*) Where under sub-section (*2*) or sub-section (*3*) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and if the period of suspension commences before the expiry of the waiting period referred to in clause (D) of sub-section (*1*) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(*6*) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable in the circumstances of the case and that injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, and compensation, if any, shall be payable accordingly.

Contracting.

12. (*1*) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that

workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(*2*) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(*3*) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(*4*) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Remedies of employer against stranger.

13. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Insolvency of employer.

14. (*1*) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(*2*) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(*3*) Where in any case such as is referred to in sub-section (*1*) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman;

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(*4*) There shall be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909, or under section 61 of the Provincial Insolvency Act, 1920, or under section 230 of the Indian Companies Act, 1913, are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

III of 1909.
V of 1920
VII of 1913.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Special provisions relating to masters and sea-

15. This Act shall apply in the case of workmen who are masters of registered ships or seamen subject to the following modifications, namely :—

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.

(3) Where an injured master or seaman is discharged or left behind in any part of His Majesty's dominions or in a foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Governor General in Council or any Local Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made ;

(b) if the defendant or the person accused as the case may be, had an opportunity by himself or his agent to cross-examine the witness ; and

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused ;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in British India relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under sub-section (1) of section 8 without making the deduction referred to in sub-section (4) of that section.

(5) No monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in British India relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

Returns as to compensation.

16. The Governor General in Council may, by notification in the Gazette of India, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the Governor General in Council may direct.

Contracting out.

17. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Proof of age.

18. Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate granted in respect of such person under section 7 or section 8 of the Indian Factories Act, 1911, before the occurrence of the injury shall be conclusive proof of the age of such person. XII of 1911

CHAPTER III.

COMMISSIONERS.

Reference to Commissioners.

19. (*1*) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by the Commissioner.

(*2*) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

Appointment of Commissioners.

20. (*1*) The Local Government may, by notification in the local official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such local area as may be specified in the notification.

(*2*) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(*3*) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code. XLV of 1860.

Venue of proceedings and transfer.

21. (*1*) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the local area in which the accident took place which resulted in the injury:

Provided that where the workman is the master of a registered ship or a seaman, any such matter may be done by or before the Commissioner for the local area in which the owner or agent of the ship resides or carries on business.

(*2*) If a Commissioner is satisfied by any party to any proceedings under this Act pending before him that such matter can be more conveniently dealt with by any other Commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section to a Commissioner in the same province save with the previous sanction of the Local Government or to a Commissioner in another province save with the previous sanction of the Governor General in Council, unless all the parties to the proceedings agree to the transfer.

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

Form of application.

22. (1) No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) Where any such question has arisen, the application may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely :—

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims ;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission ;

(c) the names and addresses of the parties ; and

(d) a concise statement of the matters on which agreement has and on those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

Powers and procedure of Commissioners.

23. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects. V of 1908

Appearance of parties.

24. Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or other person authorised in writing by such person.

Method of recording evidence.

25. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record :

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record :

Provided, further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

Costs.

26. All costs incidental to any proceedings before a Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner.

Power to submit cases.

27. A Commissioner may, if the thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

Registration of agreements.

28. (*1*) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a person under a legal disability or to a dependant, a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that—

(*a*) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(*b*) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation and the employer proves that the workman has, in fact, returned to work and is earning the same wages as he did before the accident and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Commissioner thinks just in the circumstances;

(*c*) the Commissioner may at any time rectify the register;

(*d*) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a person under any legal disability or to any dependant, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement or may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(*2*) An agreement for the payment of compensation which has been registered under sub-section (*1*) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force. IX of 1872.

Effect of failure to register agreement.

29. Where a memorandum of any agreement, the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (*1*) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

Appeals.

30. (*1*) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:—

(*a*) an order awarding as compensation a lump sum whether by way of redemption of a half monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(*b*) an order refusing to allow redemption of a half-monthly payment;

(*c*) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(*d*) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (*2*) of section 12; or

(*e*) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (*b*), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties ;

(*2*) the period of limitation for an appeal under this section shall be sixty days ;

(*3*) the provisions of section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals under this section. IX of 1908.

Recovery.

31. The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890. I of 1890.

CHAPTER IV.

RULES.

Power of the Governor General in Council to make rules

32. (*1*) The Governor General in Council may make rules to carry out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate ;

(*b*) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (*1*) of section 11 ;

(*c*) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases ;

(*d*) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases ;

(*e*) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another ;

(*f*) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance ;

(*g*) for prescribing the form and manner in which memoranda of agreements shall be presented and registered ;

(*h*) for the withholding by Commissioners, whether in whole or in part, of half-monthly payments pending decision on applications for review of the same ; and

(*i*) for any other matter which is not, in the opinion of the Governor General in Council, a matter of merely local or provincial importance.

Power of Local Government to make rules.

33. The Local Government may, subject to the control of the Governor General in Council, make rules to provide for all or any of the following matters, namely :—

(*a*) for regulating the scales of costs which may be allowed in proceedings under this Act ;

(*b*) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act ;

(*c*) for the maintenance by Commissioners of registers and records of proceedings before them ; and

(*d*) generally for carrying out the provisions of this Act in respect of any matter which is, in the opinion of the Local Government, a matter of merely local importance in the province.

Publication of rules.

34. (*1*) The power to make rules conferred by sections 32 and 33 shall be subject to the condition of the rules being made after previous publication.

(*2*) The date to be specified in accordance with clause (*3*) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 32 or section 33 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information. X of 1897.

(*3*) Rules so made shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication, shall have effect as if enacted in this Act.

SCHEDULE I.

[*See sections 2 (1) and 4.*]

List of injuries deemed to result in permanent partial disablement.

Injury.	Percentage of loss of earning capacity.
Loss of right arm above or at the elbow ...	70
Loss of left arm above or at the elbow ...	60
Loss of right arm below the elbow ...	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger ...	5

Note.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.

SCHEDULE II.

[*See section 2 (1) (n).*]

List of persons who, subject to the provisions of section 2 (1) (n), are included in the definition of workmen.

The following persons are workmen within the meaning of section 2 (*1*) (*n*) and subject to the provisions of that section that is to say, any person who is—

(*i*) employed in connection with the service of a tramway as defined in section 3 of the Indian Tramways Act 1886; or XI of 1886.

(*ii*) employed within the meaning of clause (*2*) of section 2 of the Indian Factories Act, 1911, in any place which is a factory within the meaning of sub-clause (*a*) of clause (*3*) of that section; or XII of 1911.

(*iii*) employed within the meaning of clause (*d*) of section 3 of the Indian Mines Act, 1923, in any mine which is subject to the operation of that Act; or IV of 1923.

(*iv*) employed as the master of a registered ship or as a seaman; or

(*v*) employed for the purpose of loading, unloading or coaling any ship at any pier, jetty, landing place, wharf, quay, dock, warehouse or shed, on, in or at which steam, water or other mechanical power or electrical power is used; or

(*vi*) employed in the construction, repair or demolition of—

(*a*) a building which is designed to be, is, or has been more than one storey in height above ground level, or

(*b*) a building which is used, has been used, or is designed to be used for industrial or commercial purposes and is, has been or is designed to be, not less than twenty feet in height measured from ground level to apex of the roof, or

(*c*) a bridge which is, has been or is designed to be more than fifty feet in length ; or

(*vii*) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric cable ; or

(*viii*) employed in the construction, inspection or upkeep of any underground sewer ; or

(*ix*) employed in the service of any fire brigade.

SCHEDULE III.

(*See section 3.*)

List of occupational diseases.

Occupational disease.	Employment.
Lead poisoning or its sequelae ...	Any process involving the use of lead or its preparations or compounds.
Phosphorus poisoning or its sequelae	Any process involving the use of phosphorus or its preparations or compounds.

SCHEDULE IV.

(*See section 5.*)

Table of assumed wages.

Limits.								Assumed wages.		
Where the sum arrived at by a calculation under clause (*a*) or clause (*b*) of section 5 is—										
	Rs.	A.	P.		Rs.	A.	P.	Rs.	A.	P.
less than	9	0	0		...			8	0	0
not less than	9	0	0	but less than	11	0	0	10	0	0
"	11	0	0	ditto	13	0	0	12	0	0
"	13	0	0	ditto	17	8	0	15	4	0
"	17	8	0	ditto	22	8	0	20	0	0
"	22	8	0	ditto	27	8	0	25	0	0
"	27	8	0	ditto	32	8	0	30	0	0
"	32	8	0	ditto	37	8	0	35	0	0
"	37	8	0	ditto	42	8	0	40	0	0
"	42	8	0	ditto	50	0	0	46	4	0
"	50	0	0	ditto	60	0	0	55	0	0
"	60	0	0	ditto	70	0	0	65	0	0
"	70	0	0	ditto	80	0	0	75	0	0
"	80	0	0		...			83	5	4

H. MONCRIEFF SMITH,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor-General on the 5th March 1923, and is hereby promulgated for general information :—

ACT No. X OF 1923.

An Act to consolidate the law relating to the Government Paper Currency.

WHEREAS it is expedient to consolidate the law relating to the Government Paper Currency; It is hereby enacted as follows :—

Preliminary.

Short title and extent.

1. (*1*) This Act may be called the Indian Paper Currency Act, 1923.

(*2*) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

Definition.

2. In this Act, "universal currency note" means—

(*a*) a note of the denominational value of one rupee, two and a half rupees, five rupees, ten rupees, fifty rupees, or one hundred rupees, or

(*b*) a note of any other denominational value which the Governor-General in Council may, by notification in the *Gazette of India*, specify in this behalf.

The Currency Department.

Currency Department for issue of currency notes.

3. There shall continue to be a Department of the public service, to be called the Currency Department, whose function shall be the issue of promissory notes of the Government of India, to be called currency notes, payable to bearer on demand, and of such denominational values as the Governor-General in Council may direct.

Controller of the Currency.

4. At the head of the Department there shall be an officer to be called the Controller of the Currency (hereinafter referred to as the Controller).

Power to establish circles of issue, offices of issue, and currency agencies.

5. The Governor-General in Council may, by notification in the *Gazette of India*,—

(*a*) establish districts, to be called circles of issue, seven of which circles shall include the towns of Calcutta, Madras, Bombay, Rangoon, Lahore, Cawnpore and Karachi, respectively ;

(*b*) appoint in each circle some one town to be the place of issue of currency notes, as hereinafter provided ;

(*c*) establish in each such town an office or offices of issue ; and

(*d*) establish in any town situate in any circle an office, to be called a currency agency.

Deputy Controllers of the Currency and Currency Agents.

6. For each circle of issue there shall be an officer in charge to be called the Deputy Controller of the Currency, and for each Currency Agency an officer to be called the Currency Agent.

Subordination of Officers.

7. For the purposes of this Act—

(*a*) Deputy Controllers of the Currency shall be subordinate to the Controller ; and

(*b*) the Currency Agent at any town shall be subordinate to the Deputy Controller of the Currency for the circle of issue in which that town is situate.

Appointment of Officers.

8. All officers under this Act shall be appointed by the Governor-General in Council.

Supply and Issue of Currency Notes.

Controller and Deputy Controllers to provide and distribute currency notes.

9. (*1*) The Controller shall provide currency notes of the denominational values prescribed under this Act, and shall supply the Deputy Controllers with such notes as they need for the purposes of this Act.

(*2*) The Deputy Controllers shall supply the Currency Agents subordinate to them, respectively, with such notes as those Agents need for the purposes of this Act.

(*3*) Every such note, other than a universal currency note, shall bear upon it the name of the town from which it is issued.

Signatures to currency notes.

10. The name of the Controller or one of the Deputy Controllers, or of some other person authorised by the Controller or by one of the Deputy Controllers, to sign currency notes, shall be subscribed to every such note, and may be impressed thereon by machinery, and when so impressed, shall be deemed to be a valid signature.

Issue of currency notes for silver or gold coin by officers in charge of circles.

11. The officers in charge of circles of issue shall, in their respective circles, on the demand of any person, issue, from the office or offices of issue established in their respective circles, currency notes of the denominational values prescribed under this Act, in exchange for the amount thereof—

(*a*) in rupees or silver half-rupees or in gold coin which is legal tender under the Indian Coinage Act, 1906, or III of 1906.

(*b*) in rupees made and declared to be a legal tender under the provisions of the Native Coinage Act, 1876. IX of 1876.

Issue of currency notes for silver or gold coin by Currency Agents.

12. Any Currency Agent to whom currency notes have been supplied under section 9 may, if he thinks fit, on the demand of any person, issue from his agency any such notes in exchange for the amount thereof in any coin specified in section 11.

Issue to Government Treasuries of currency notes for gold coin not legal tender or gold bullion.

13. The officers in charge of circles of issue shall, on the requisition of the Controller, issue to any Government Treasury currency notes in exchange for gold coin which is not legal tender under the Indian Coinage Act, 1906, or for gold bullion III of 1906.
at the rate of one rupee for 11·30016 grains troy of fine gold.

Currency Notes where legal tender and where payable.

Currency notes where legal tender.

14. A universal currency note shall be a legal tender at any place in British India, and any other currency note shall be a legal tender at any place within the circle from which the note was issued,

for the amount expressed in the note in payment or on account of—

(*a*) any revenue or other claim, to the amount of one rupee or upwards, due to the Government of India, and

(*b*) any sum of one rupee or upwards, due by the Government of India or by any body corporate or other person in British India:

Provided that no currency note shall be deemed to be a legal tender by the Government of India at any office of issue.

Currency notes where payable.

15. A currency note shall be payable at the following offices of issue, namely:—

(*a*) a universal currency note at any office of issue;

(*b*) a currency note other than a universal currency note at any office of issue in the town from which it was issued;

Provided that any such note issued before the 18th day of February 1910, shall also be payable,—

(*i*) in the case of a note issued from the office at Cawnpore or Lahore, at any office of issue in Calcutta, and

(*ii*) in the case of a note issued from the office at Karachi, at any office of issue in Bombay.

Currency notes issued from currency agencies where deemed to be issued.

16. For the purposes of sections 14 and 15, currency notes issued from any currency agency shall be deemed to have been issued from the town appointed under section 5 to be the place of issue in the circle of issue in which that agency is established.

Provision in case of closure of office.

17. Where an office of issue is closed, the Governor-General in Council shall, by notification in the *Gazette of India*, direct that, with effect from the date of the closing of such office, all currency notes issued therefrom shall, for the purposes of sections 14 and 15, be deemed to have been issued from such other office as may be specified in such notification.

Reserve.

Paper Currency Reserve.

18. (*1*) The provisions contained in this section shall not come into operation until such day (hereinafter referred to as the appointed day) as the Governor-General in Council may direct in this behalf.

(*2*) A Reserve shall be maintained for the satisfaction and discharge of the currency notes in circulation and all such notes shall be deemed to have been issued on the credit of the revenues of India as well as on that of the Reserve.

(*3*) The Reserve shall consist of two parts, namely :—

(*a*) the metallic Reserve, and

(*b*) the securities Reserve.

(*4*) The metallic Reserve shall consist of the total amount represented by the sovereigns, half-sovereigns, rupees, silver half-rupees, and gold and silver bullion for the time being held on that account by the Secretary of State for India in Council and by the Governor-General in Council :

Provided that no amount of gold coin and bullion held by the Secretary of State in the United Kingdom in excess of fifty millions of rupees in value reckoned at the rate hereinafter provided for shall be included in the metallic Reserve.

(*5*) The securities Reserve shall consist of the securities which are for the time being held on that account by the Secretary of State for India in Council and on behalf of the Governor-General in Council :

Provided that—

(*a*) no securities held by the Secretary of State for India in Council, other than securities of the United Kingdom the date of maturity of which is not more than one year from the date of their purchase, shall be included in the securities Reserve ; and

(*b*) the securities held on behalf of the Governor-General in Council shall be securities of the Government of India and shall not exceed in amount two hundred millions of rupees, of which an amount of not more than one hundred and twenty millions of rupees may be securities created by the Government of India and issued to the Controller (such securities being hereinafter referred to as created securities).

(*6*) For the purposes of this section the expression "currency notes in circulation" means the whole amount of currency notes at any time in circulation :

Provided that currency notes which have not been presented for payment, in the case of notes of the denominational value of fifty or one hundred rupees, within forty years, and in the

case of notes of any denominational value exceeding one hundred rupees, within one hundred years, from the first day of April following the date of their issue, shall be deemed to be not in circulation :

Provided, further, that all such notes shall be deemed to have been issued on the credit of the revenues of India and shall, if presented for payment, be paid from such revenues.

(7) Save as hereinafter provided in section 20, the amount of currency notes in circulation at any time shall not exceed the amount of the metallic Reserve together with the amount of the securities Reserve :

Provided that it shall not be lawful for the Governor-General in Council to direct the issue of currency notes, if or to the extent that such issue would have the effect of raising the amount of notes in circulation to an amount in excess of twice the amount for the time being of the metallic Reserve.

(8) For the purpose of determining—

(a) the amount of the metallic Reserve, gold bullion shall be reckoned at the rate of one rupee for 11·30016 grains troy of fine gold, and silver bullion at the price in rupees at which it was purchased,

(b) the amount of the securities Reserve purchased securities shall be reckoned at the price at which they were purchased and created securities at the market price of similar securities on the date of their issue.

(9) The securities of the Government of India in the Reserve shall be held by the Controller and the Master of the Mint at Calcutta or of such other Mint as the Governor-General in Council may direct in this behalf, in trust for the Secretary of State for India in Council.

Temporary provisions.

19. (1) As soon as conveniently may be after the relation of the amount of the currency notes in circulation to the amount of the Reserve has been brought into conformity with sub-sections (2) to (8) of section 18 and the metallic Reserve is not less than half the amount of currency notes in circulation, the Governor-General in Council shall fix the appointed day.

(2) The provisions contained in this section shall be in force until the appointed day, but shall, as from that day, be deemed to be repealed.

(3) Save as hereinafter provided in section 20, the whole amount of currency notes at any time in circulation shall not exceed the total amount represented by the sovereigns, half-sovereigns, rupees, silver half-rupees and gold bullion, and the sum expended in the purchase of the silver bullion and securities, which are for the time being held by the Secretary of State for India in Council and by the Governor-General in Council as a reserve to provide for the satisfaction and discharge of the said notes, and the said notes shall be deemed to have been issued on the credit of the revenues of India as well as on the security of the said coin, bullion and securities :

Provided that, for the purposes of this sub-section, currency notes which have not been presented for payment, in the case of notes of the denominational value of fifty or one hundred rupees within forty years, and, in the case of notes of any denominational value exceeding one hundred rupees, within one hundred years, from the first day of April following the date of their issue, shall be deemed not to be in circulation :

Provided, further, that all notes which are declared under the first proviso to this sub-section not to be in circulation shall be deemed to have been issued on the credit of the revenues of India and shall, if subsequently presented for payment, be paid from such revenues.

(4) The securities mentioned in sub section (3) shall be securities of the United Kingdom of Great Britain and Ireland or of the Government of India, or securities issued by the Secretary of State for India in Council under the authority of Act of Parliament and charged on the revenues of India, and the value of them at the price at which they are purchased shall not exceed eight hundred and fifty millions of rupees.

Issue of currency notes for certain gold coin or gold or silver bullion or securities held by Secretary of State.

(5) If the Secretary of State for India in Council consents to hold in gold coin or bullion or in silver bullion or in securities of the kinds mentioned in sub-section (4), the equivalent in value to notes issued in India as a reserve to secure the payment of such notes, the Governor-General in Council may from time to time direct that currency notes shall be issued to an amount equal to the value of the coin, bullion and securities so held by the Secretary of State for India in Council.

(6) Notwithstanding anything to the contrary in this Act, any securities created by the Government of India and issued to the Controller shall, for the purposes of this Act, be deemed to be securities purchased by the Governor-General in Council, and the market price, on the day such securities were so issued, of similar securities shall be deemed to be the price at which the securities so created were purchased, and all references to securities so purchased, wherever occurring in this Act, shall be deemed also to refer to securities so created, and all references to sums expended in such purchases or to prices paid therefor shall be deemed, in the case of securities so created, to refer to such prices, and this Act shall be construed accordingly.

(7) As long as the value of securities created by the Government of India and issued to the Controller and deemed in accordance with the provisions of the foregoing sub-section to be securities purchased by the Governor-General in Council exceeds one hundred and twenty millions of rupees, all interest derived from the securities in the Reserve shall, with effect from the first day of April, 1923, be applied in reduction of such excess holding of securities and the Auditor-General shall in every year grant a certificate of the amount of such interest and shall also certify whether or not it has been so applied. For the purposes of this sub-section securities so created and issued shall be deemed to carry interest at the same rate as other similar securities.

(8) The securities purchased by the Governor-General in Council shall be securities of the Government of India, and shall be held by the Controller and the Master of the Mint at Calcutta or of such other Mint as the Governor-General in Council may direct in this behalf, in trust for the Secretary of State for India in Council.

Power to issue currency notes against bills of

20. Notwithstanding anything to the contrary in section 18 or section 19, the Governor-General in Council may authorise the Controller to issue currency notes to an amount in all not exceeding fifty millions of rupees against bills of exchange which will mature within ninety days from the date of such issue and satisfy such other conditions as the Governor-General in Council may, by general or special order, prescribe. Currency notes so issued shall be in addition to those against which the Reserve is held and shall be deemed to have been issued on the credit of such bills and of the revenues of India and shall, when presented, be paid from such revenues.

Power to dispose of coin and bullion in reserve.

21. Subject to the provisions of sections 18 and 19, the Governor-General in Council may at any time, if he thinks it expedient convert any of the coin or bullion for the time being

held by him as a part of the reserve into coin of any of the kinds mentioned in section 11 or into gold or silver bullion.

Coin or bullion not in India when deemed to be part of the reserve.

22. Notwithstanding anything to the contrary in this Act, any coin or bullion which is held by or on behalf of the Secretary of State for India in Council in the United Kingdom or under the control of the Government of any part of His Majesty's Dominions for the purpose of coinage for, or transmission to, the Governor-General in Council, and any coin or bullion which is in course of transmission from the Secretary of State for India in Council or the Government of any part of His Majesty's Dominions to the Governor-General in Council and any coin or bullion which is in the course of transmission from the Governor-General in Council to the Secretary of State for India in Council or the Government of any part of His Majesty's Dominions shall be deemed, during the period such coin or bullion is so held or is so in course of transmission, to be part of the reserve referred to in sections 18 and 19.

Power to sell and replace Indian securities.

23. (1) The Controller may, at any time, when ordered so to do by the Governor-General in Council, sell and dispose of any of the securities held under sub-section (9) of section 18 or sub-section (8) of section 19.

(2) For the purpose of effecting such sales, the Master of the Mint at Calcutta or of such other Mint as aforesaid shall, on a request in writing from the Controller, at all times sign and endorse the securities, and the Controller, if so directed by the Governor-General in Council, may purchase securities of the Government of India to replace such sales.

Account of interest on securities.

24. An account showing the amount of the interest accruing on the securities held as part of the reserve under this Act and the expenses and charges incidental thereto, shall be rendered annually by the Controller to the Governor-General in Council, and published annually in the *Gazette of India.*

Private Bills payable to Bearer on Demand.

Prohibition of issue of private bills or notes payable to bearer on demand.

25. No person in British India shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such person :

Provided that cheques or drafts payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty for issuing such bills or notes and institution of prosecutions.

26. (1) Any person contravening the provisions of section 25 shall,on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(2) Every prosecution under this section shall be instituted by the officer in charge of the circle of issue in which the bill, hundi, note or engagement is drawn, accepted, made or issued.

Supplementary Provisions.

Abstracts of accounts.

27. An abstract of the accounts of the Currency Department, showing—

(*a*) the whole amount of currency notes in circulation;

(*b*) the amount of coin and bullion reserved, distinguishing gold from silver, and showing separately the amount of coin or bullion held by or on behalf of the Secretary of State for India in Council, or in transit from or to India, or in the custody of the Mint Master during coinage;

(*c*) the nominal value of, and the price paid for, the securities held as part of the reserve, showing separately those held by the Secretary of State for India in Council and those held in India under sub-section (*9*) of section 18 or sub-section (*8*) of section 19; and

(*d*) the amount of currency notes issued against bills of exchange under the provisions of section 20;

shall be made up four times in each month by the Controller, and published, as soon as may be, in the *Gazette of India*.

Provision as to lost, mutilated and imperfect notes.

28. Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall as of right be entitled to recover from the Government of India the value of any lost, mutilated or imperfect currency note:

Provided that the Governor-General in Council may by rule prescribe the circumstances, conditions and limitations under which the value of such notes may be refunded as of grace.

Power to make rules.

29. (*1*) The Governor-General in Council may make rules to carry out the purposes and objects of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) fix the denominational values for which currency notes shall be issued;

(*b*) provide for the alteration of the limits of any of the circles of issue;

(*c*) declare the places at which currency notes shall be issued; and

(*d*) prescribe the circumstances in, and the conditions and limitations subject to which, the value of lost, mutilated or imperfect currency notes may be refunded at the office of issue.

(*3*) Every such rule shall be published in the *Gazette of India*, and, on such publication, shall have effect as if enacted in this Act.

Repeals.

30. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the last column thereof:

Provided that all securities purchased and notes issued under the Indian Paper Currency Act, 1910, and all securities and notes which, under section 30 of that Act, are to be deemed to have been purchased or issued thereunder shall, if undisposed of or in circulation at the commencement of this Act, be deemed to have been respectively purchased and issued under this Act: II of 1910

Provided, further, that all currency notes, which, under the said section 30, are to be deemed to have been issued from the office of issue in the town of Cawnpore, shall still be deemed to have been issued from that office.

THE SCHEDULE.

(ENACTMENTS REPEALED.)

[*See section 30.*]

Year.	No.	Short title.	Extent of repeal.
1910	II	The Indian Paper Currency Act, 1910.	So much as has not been repealed.
1911	VII	The Indian Paper Currency (Amendment) Act, 1911.	The whole
1914	X	The Repealing and Amending Act, 1914.	So much of the Second Schedule as relates to the Indian Paper Currency Act, 1910.
1917	XIX	The Indian Paper Currency (Amendment) Act, 1917.	So much as has not been repealed.
1920	XLV	The Indian Paper Currency (Amendment) Act, 1920.	The whole.
1922	XII	The Indian Finance Act, 1922.	Section 6.

H. MONCRIEFF SMITH,

Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, APRIL 11, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

THE following Act of the Indian Legislature received the assent of the Governor General on the 5th March, 1923, and is hereby promulgated for general information :—

ACT NO. VI OF 1923.

An Act further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments.

WHEREAS it is expedient further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Cantonments (House-Accommodation) Act, 1923.

(*2*) It extends to the whole of British India (inclusive of British Baluchistan) except Aden.

(*3*) It shall come into force on the first day of April, 1923, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3 :

Provided that any notification made under section 3 of the Cantonments (House-Accommodation) Act, 1902, which is in force at the commencement of this Act, shall be deemed to be a notification made under section 3 of this Act. II of 1902.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Brigade area" means one of the Brigade areas, whether occupied by a brigade or not, into which India is for military purposes for the time being divided, and includes any area which the Governor General in Council may, by notification in the Gazette of India, declare to be a Brigade area for all or any of the purposes of this Act ;

(b) "Cantonment Authority" means a Cantonment Committee, or, in the case of a cantonment for which such a Committee has not been constituted or has ceased to exist or cannot be convened, the Commanding Officer of the cantonment ;

(c) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the Governor General in Council may, by notification in the Gazette of India, declare to be a Command for all or any of the purposes of this Act ;

(d) "Commanding Officer of the cantonment" means the officer for the time being in command of the forces in a cantonment ;

(e) "District" means one of the Districts into which India is for military purposes for the time being divided ; it includes a Brigade area which does not form part of any such District and any area which the Governor General in Council may, by notification in the Gazette of India, declare to be a District for all or any of the purposes of this Act ;

(f) "house" means a house suitable for occupation by a military officer or a military mess, and includes the land and buildings appurtenant to a house ;

(g) "military officer" means a commissioned or warrant officer of His Majesty's military or air forces on military or air-force duty in a cantonment, and includes a Chaplain on duty with troops in a cantonment, a Cantonment Magistrate and any person in Army departmental employment whom the Officer Commanding the District may at any time, by an order in writing, place on the same footing as a military officer for the purposes of this Act ;

(h) "owner" includes the person who is receiving, or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent, or be entitled to receive it, if the house were let to a tenant ; and

(i) a house is said to be in a state of reasonable repair when—

(i) all floors, walls, pillars and arches are sound and all roofs sound and water-tight,

(ii) all doors and windows are intact, properly painted or oiled, and provided with proper locks or bolts or other secure fastenings, and

(iii) all rooms, out-houses and other appurtenant buildings are properly colour-washed or white-washed.

(2) If any question arises whether any land or building is appurtenant to a house, it shall be decided by the Commanding Officer of the cantonment, whose decision thereon shall, subject to revision by the District Magistrate, be final.

CHAPTER II.

APPLICATION OF ACT.

Cantonments, or parts of cantonments, in which Act to be operative.

3. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare this Act to be operative in any cantonment or part of a cantonment situate in the Province, other than a cantonment situate within the limits of a presidency-town.

(2) Before issuing a notification under sub-section (1) in respect of any cantonment or part of a cantonment, the Local Government shall cause local inquiry to be made with a view

to determining whether it is expedient to issue such notification and what portion (if any) of the area proposed to be included therein should be excluded therefrom.

Saving of written instruments.

4. Nothing in this Act shall affect the provisions of any written instrument executed by or on behalf of the East India Company or the Government, unless the other party entitled and the Secretary of State for India in Council consent in writing to be bound by the terms of this Act.

CHAPTER III.

APPROPRIATION OF HOUSES.

Liability of houses to appropriation.

5. Every house situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (*1*) of section 3 is for the time being in force shall be liable to appropriation by the Government on a lease in the manner and subject to the conditions hereinafter provided.

Inspection of house required for occupation by the military.

6. (*1*) Where the Commanding Officer of the cantonment considers that the liability imposed by section 5 should be enforced in respect of any house, he shall serve a notice on the owner of the house requiring him to permit the house to be inspected, measured and surveyed by such person and on such day, not being less than three days from the service of the notice, and at such time as may be specified in the notice.

(*2*) On the day and at the time so specified, the owner shall be bound to afford all reasonable facilities to the person specified in the notice for the purpose of the inspection, measurement and survey of the house, and, if he refuses or neglects to do so, the said person may, subject to rules made under this Act, enter on the premises and do all such things as may be reasonably necessary for the said purpose.

Procedure for taking house on lease.

7. (*1*) If, on the report of such person as aforesaid, the Commanding Officer of the cantonment is satisfied that the house is suitable for occupation by a military officer or a military mess, he may, with the previous sanction of the Officer Commanding the District, by notice—

(*a*) require the owner to execute a lease of the house to the Government for a specified period which shall not be less than five years ;

(*b*) require the existing occupier, if any, to vacate the house ; and

(*c*) require the owner to execute within such time as may be specified in the notice such repairs as may, in the opinion of the Commanding Officer of the cantonment, be necessary for the purpose of putting the house into a state of reasonable repair.

(*2*) Every notice issued under sub-section (*1*) shall state the amount of the annual rent proposed as reasonable for the house, calculated on the assumption that the owner will carry out the required repairs, if any. It shall also contain an estimate of the cost of such repairs.

(*3*) The following shall be deemed to be conditions of every lease executed under sub-section (*1*), namely :—

(*a*) that the house shall, on the expiration of the lease, be re-delivered to the owner in a state of reasonable repair, and

(*b*) that the grounds and the garden, if any, appertaining to the house shall be maintained in the condition in which they are at the time at which the lease is executed.

Procedure to be observed before taking a house on lease.

8. The Officer Commanding the District shall not sanction the issue of any notice under section 7 unless he is satisfied—

(*a*) that the house in respect of which it is proposed to issue the notice is suitable for occupation by a military officer or a military mess, and

(*ii*) that there is not in the cantonment, or, if this Act is in force in a part only of the cantonment, then in that part thereof, a sufficient number of houses already available and suitable for occupation by military officers or military messes whose accommodation in the cantonment, or a part thereof, as the case may be, is in his opinion necessary or expedient.

Sanction to be obtained before a house is occupied as a hospital, etc.

9. No house in any cantonment or part of a cantonment in which this Act is operative shall, unless it was so occupied at the date of the issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902, as the case may be, to be operative, be occupied for the purposes of a hospital, school, school hostel, bank, hotel, or shop, or by a railway administration, a company or firm engaged in trade or business or a club, without the previous sanction of the Officer Commanding the District given with the concurrence of the Commissioner or, in a province where there are no Commissioners, of the Collector. II of 1902.

Houses not to be appropriated in certain cases.

10. No notice shall be issued under section 7 if the house—

(*a*) was, at the date of the issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902, as the case may be, to be operative in the cantonment or part of the cantonment, or is, with such sanction as is required by section 9, occupied as a hospital, school, school hostel, bank, hotel or shop, and has been so occupied continuously during the three years immediately preceding the time when the occasion for issuing the notice arises or II of 1902

(*b*) was, at the date of such a notification as is referred to in clause (*a*), or is, with such sanction as aforesaid, occupied by a railway administration or by a company or firm engaged in trade or business or by a club, or

(*c*) is occupied by the owner, or

(*d*) has been appropriated by the Local Government with the concurrence of the Officer Commanding the District, or by the Governor General in Council, for use as a public office or for any other purpose.

Time to be allowed for giving possession of house.

11. (*1*) If a house is unoccupied, a notice issued under section 7 may require the owner to give possession of the same to the Commanding Officer of the cantonment within twenty-one days from the service of the notice.

(*2*) If a house is occupied, a notice issued under section 7 shall not require its vacation in less than thirty days from the service of the notice.

(*3*) Where a notice has been issued under section 7 and the house has been vacated in pursuance thereof, the lease shall be deemed to have commenced on the date on which the house was so vacated.

Surrender of house when to be enforced.

12. If the owner fails to give possession of a house to the Commanding Officer of the cantonment in pursuance of a notice issued under section 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the District Magistrate, by himself or by another person generally or specially authorised by him in this behalf, shall enter on the premises and enforce the surrender of the house.

Option in certain cases for owner on whom notice is issued under section 7 to call upon the Government to purchase

13. (*1*) If a house, in respect of which a notice is issued under section 7, is shown, to the satisfaction of the Local Government, or is proved by a decree or order of a Court of competent jurisdiction, to have been erected—

(*a*) under any conditions, rules, regulations or orders which were in force in Bengal prior to the eighth day of December, 1864, and conferred on the owner the option of offering the house for sale to the military officer applying for its appropriation for his occupation or to the East India Company or the Government, or

(*b*) under any conditions, rules, regulations or orders which were in force in Bombay prior to the first day of June, 1875, and conferred such an option as is described in clause (*a*),

then the owner shall have the option of either complying with the notice or offering the house for sale to the Government.

(*2*) If the owner elects to sell the house, and the Government is willing to purchase it, the question of the amount of the purchase-money to be paid shall, in the event of disagreement, be referred to a Committee of Arbitration.

Provision where house is held on long lease by a tenant.

14. (*1*) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year, the Secretary of State for India in Council shall, for the term of one year from the date on which the house is vacated in pursuance of the notice, or for the unexpired term of the lease whichever is the shorter, be liable to the owner for the rent fixed by the registered lease instead of for the rent payable under this Act if the rent so fixed exceeds the rent so payable.

(*2*) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease from year to year, the Secretary of State for India in Council shall be liable as aforesaid for the term of six months from the date on which the house is vacated in pursuance of the notice.

(*3*) Nothing in this section shall be deemed—

(*a*) to render the said Secretary of State in Council so liable unless an application in writing in this behalf is made by the owner to the Commanding Officer of the cantonment within fifteen days from the service of the notice ; or

(*b*) to limit or otherwise affect any agreement between the said Secretary of State in Council and the owner.

Power for owner to require reference to arbitration on question of rent.

15. (*1*) If the owner considers that the rent stated in a notice issued under section 7 is not reasonable, he may, within a period of fifteen days from the service of such notice, require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

(*2*) If the owner does not make such a requisition within the said period, he shall be deemed to have accepted the rent so offered.

Power for owner to require reference to arbitration on question of repairs.

16. (*1*) If the owner fails to execute any repairs to a house as required by a notice issued to him under section 7, the Commanding Officer of the cantonment may by notice require the owner to execute the repairs within such period, not being less than fifteen days, as may be specified in the notice.

(*2*) If the owner objects to any requisition contained in a notice issued under sub-section (*1*), he may, within fifteen days from the service of the notice, require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

Power to have repairs executed and recover cost.

17. Where—

(*a*) the owner fails to comply with a notice issued under sub-section (*1*) of section 16 and has not, within fifteen days from the service of such notice, required that the matter be referred to a Committee of Arbitration, or

(*b*) a Committee of Arbitration decides that repairs are necessary and the extent to which they are necessary, and specifies the period within which they are to be executed, and the owner fails to execute them within such period, and has not within one month from the date of the decision appealed therefrom to the Civil Court as hereinafter provided, or

(c) the owner fails to execute within such period as may be specified by the Civil Court hearing such appeal such repairs as the Court may decide to be necessary,

the Military Works Services or the Public Works Department shall, on the application of the Commanding Officer of the cantonment, cause the repairs specified in the notice or, if the matter has been referred to a Committee of Arbitration, in the decision of the Committee or the Civil Court, as the case may be, to be executed at the expense of the Government, and the cost thereof may be deducted from the rent payable to the owner.

Notice to be given of devolution of interest in house in cantonment.

18. Every person on whom devolves, by transfer, by succession or by operation of law, the interest of an owner in any house, or in any part of any house, situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force, shall be bound to give notice of the fact to the Commanding Officer of the cantonment within one month from the date of such devolution, and, if he, without reasonable cause, fails to do so, he shall be punishable with fine which may extend to fifty rupees.

CHAPTER IV.

COMMITTEES OF ARBITRATION.

Convening of Committees of Arbitration in cases falling under sub-section (2) of section 13.

19. In the event of any disagreement as to the amount of the purchase-money of a house to be sold under sub-section (2) of section 13, the Commanding Officer of the cantonment shall forthwith proceed to convene a Committee of Arbitration to determine it.

Convening of Committees of Arbitration on requisition of owners.

20. Where a requisition is made to the Commanding Officer of the cantonment by an owner under section 15 or section 16, the Commanding Officer of the cantonment shall forthwith proceed to convene a Committee of Arbitration—

(a) to determine the amount of the rent to be paid, or

(b) to determine whether any, and (if any) what repairs are necessary, the extent to which they are necessary, and the period within which they are to be executed, or

(c) otherwise to determine the question in dispute.

Procedure for convening Committees of Arbitration generally.

21. (1) Where a Committee of Arbitration is to be convened the Commanding Officer of the cantonment shall forthwith cause an order to be published in Station Orders stating the matter to be determined.

(2) The Commanding Officer of the cantonment shall forthwith send a copy of such order to the District Magistrate and to the parties concerned, and, as soon as may be, shall by notice call upon the owner concerned to make, and shall himself make, nominations in accordance with the provisions of sections 22 and 23.

Constitution of Committee of Arbitration.

22. (1) Every Committee of Arbitration shall consist of five members, namely :—

(a) two members nominated by the Commanding Officer of the cantonment, one of whom shall, if possible, be an officer of the Military Works Services or of the Public Works Department ;

(b) two members nominated by the owner concerned, who shall be persons liable to pay taxes in the cantonment and ordinarily resident therein or in the immediate vicinity thereof, and

(c) a chairman who shall be a person not in the service of the Government or the Cantonment Authority and not having any interest in house-property in the cantonment, which has been appropriated or is liable to appropriation under this Act, and who shall be nominated by the Commanding Officer of the cantonment.

(2) If the Commanding Officer of the cantonment or the owner concerned fails without reasonable cause to nominate, within seven days from the date on which the owner has been called upon to make nominations under section 21, any member whom he is entitled to nominate under sub-section (1) or if any member who has been nominated neglects or refuses to act and the person by whom such member was nominated fails to nominate another member in his place within seven days from the date on which he may be called upon to do so by the District Magistrate, the District Magistrate shall forthwith appoint a member or members to fill the vacancy or vacancies.

Members of Committees of Arbitration to be persons who have no direct interest and whose services are immediately available.

23. (1) No person who has a direct interest in the matter under reference or whose services are not immediately available for the purposes of the Committee shall be nominated a member of a Committee of Arbitration.

(2) If, in the opinion of the District Magistrate, any person who has been nominated has a direct interest in the matter under reference, or is otherwise disqualified for nomination, or if the services of any such person are not immediately available as aforesaid, and if the person by whom any such person was nominated fails to nominate another member within seven days from the date on which he may be called upon to do so by the District Magistrate, such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 22.

Meetings and powers of Committees of Arbitration.

24. (1) When a Committee of Arbitration has been duly constituted, the Commanding Officer of the cantonment shall by notice inform each of the members of the fact, and the Committee shall meet as soon as may be thereafter.

(2) The Committee shall receive and record evidence and shall have power to administer oaths to witnesses, and the District Magistrate, on requisition in writing signed by the Chairman of the Committee, shall issue the necessary processes for the attendance of witnesses and the production of documents required by the Committee, and may enforce the said processes as if they were processes for attendance or production before himself.

Powers of Chairman of Committee of Arbitration as to meetings.

25. The Chairman of the Committee of Arbitration shall fix the time and place of meeting, and shall have power to adjourn the meeting from time to time as may be necessary.

Calculation of amount of purchase-money by Committees of Arbitration.

26. In determining the amount of the purchase-money to be paid for a house to be sold under sub-section (2) of section 13, the Committee of Arbitration shall estimate the market-value of the house at the date on which the notice was served on the owner under section 7.

Calculation of rent by Committees of Arbitration.

27. In determining the amount of the rent to be paid for a house, the Committee of Arbitration shall estimate the market value of the house at the date on which the notice was served on the owner under section 7, and shall fix the annual rent at such percentage on that value as is for the time being recoverable by way of annual rent on the market-value of similar houses in the cantonment:

Provided that due allowance shall be made in respect of the cost to the lessee of maintaining the house in a state of reasonable repair during the period of the lease.

Decisions of Committees of Arbitration.

28. (1) The decision of every Committee of Arbitration shall be in accordance with the majority of votes taken at a meeting at which the chairman and at least three of the other members are present.

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the chairman shall prevail.

(3) Save as provided in this Act, the decision of a Committee of Arbitration shall be final and shall not be questioned in any Court.

CHAPTER V.

APPEALS.

Appeal to Civil Court.

29. (*1*) If the Commanding Officer of the cantonment, or the owner of a house in respect of which any matter has been referred to a Committee of Arbitration, is dissatisfied with any decision of the Committee of Arbitration, he may, within one month from the date of such decision, appeal to the principal Civil Court having ordinary original civil jurisdiction in the cantonment, and the decision of such Court shall be final.

(*2*) A Civil Court hearing an appeal under this section shall, so far as may be, follow the same procedure and have the same powers as it follows and has when hearing an appeal under the Code of Civil Procedure, 1908. V of 1908

Appeal to military authorities.

30. (*1*) The owner or any tenant of a house in respect of which a notice has been issued under section 7 may appeal to the Officer Commanding the District or, if that officer is the Commanding Officer of the cantonment, to the General Officer Commanding-in-Chief, the Command, against the decision of the Commanding Officer of the cantonment to appropriate the house.

(*2*) No such appeal shall be admitted unless made within a period of twenty-one days from the service of the notice aforesaid, and such period shall be computed in accordance with the provisions of the Indian Limitation Act, 1908, with respect to the computation of periods of limitation thereunder. IX of 1908.

Petition of appeal.

31. (*1*) Every petition of appeal under section 30 shall be in writing and accompanied by a copy of the notice appealed against.

(*2*) Any such petition may be presented to the Commanding Officer of the cantonment, and that officer shall be bound to forward it to the authority empowered by section 30 to hear the appeal, and may attach thereto any report which he may desire to make in explanation of the notice appealed against.

(*3*) If any such petition is presented direct to the Officer Commanding the District and an immediate order on the petition is not necessary, the Officer Commanding the District may refer the petition to the Commanding Officer of the cantonment for report.

Order in appeal final.

32. The decision on any such appeal of the Officer Commanding the District or of the General Officer Commanding-in-Chief, the Command, as the case may be, shall be final, and shall not be questioned in any Court otherwise than on the ground that the house is situate in a cantonment, or part of a cantonment in which this Act is not operative :

Provided that no appeal shall be decided until the appellant has been heard or has had a reasonable opportunity of being heard in person or though a legal practitioner.

Suspension of action pending appeal.

33. Where an appeal has been presented under section 30 within the period prescribed by sub-section (*2*) of that section, all action on the notice shall, on the application of the appellant, be held in abeyance pending the decision of the appeal.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

Service of notice and requisitions.

34. Every notice or requisition prescribed by this Act shall be in writing, signed by the person by whom it is given or made or by his duly appointed agent, and may be served by post on the person to whom it is addressed, or, in the case of an owner who does not reside in or near the cantonment, on his agent appointed under the Cantonments Act, 1910, or any rule made thereunder. XV of 1910.

Power for Governor General in Council to make rules.

35. (*1*) The Governor General in Council may make rules to carry out the purposes and objects of this Act.

(*2*) In particular and without prejudice to the generality of of the foregoing power, such rules may—

(*a*) regulate the procedure of Committees of Arbitration; and

(*b*) define the powers of entry, inspection, measurement or survey which may be exercised in carrying out the purposes and objects of this Act or of any rule made hereunder.

Further provisions respecting rules.

36. (*1*) The power to make rules under section 35 shall be subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette of India and in such other manner (if any) as the Governor General in Council may direct.

(*2*) Any rule under section 35 may be general for all cantonments or parts of cantonments in British India in which this Act is for the time being operative, or may be special for any of such cantonments or parts as the Governor General in Council may direct.

(*3*) A copy of the rules under section 35 for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Authority.

(*4*) In making any rule under clause (*b*) of sub-section (*2*) of section 35 the Governor General in Council may direct that whoever obstructs any person, not being a public servant within the meaning of section 21 of the Indian Penal Code, in making any entry, inspection, measurement or survey, shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first during which such offence continues.

Inapplicability of section 556 of the Code of Criminal Procedure, 1898, to trials of offences.

37. No Judge or Magistrate shall be deemed, within the meaning of section 556 of the Code of Criminal Procedure, 1898, to be a party to, or personally interested in, any prosecution for an offence constituted by or under this Act merely because he is a member of the Cantonment Committee or has ordered or approved the prosecution. V of 1898.

Protection to persons acting under Act.

38. No suit or other legal proceeding shall lie against any person for anything in good faith done, or intended to be done, under this Act or in pursuance of any lawful notice or order issued under this Act.

Repeals.

39. On and from the commencement of this Act, the enactments mentioned in the Schedule shall be repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

(SEE SECTION 39.)

Enactments repealed.

Year.	No.	Short title.	Extent of repeal.
1902 ..	II	The Cantonments (House-Accommodation) Act, 1902.	The whole.
1909 ...	V	The Amending (Army) Act, 1909.	So much as has not been repealed.
1914 ...	IV	The Decentralization Act, 1914.	So much of the Schedule as relates to the Cantonments (House-Accommodation) Act, 1902.

H. MONCRIEFF SMITH,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 5th March, 1923, and is hereby promulgated for general information :—

ACT NO. VII OF 1923.

An Act to give effect in British India to the Treaty for the Limitation of Naval Armament.

WHEREAS it is expedient to give effect in British India to the Treaty for the Limitation of Naval Armament signed at Washington on behalf of His Majesty on the sixth day of February 1922 ; It is hereby enacted as follows :—

Short title, extent, and commencement.

1. (*1*) This Act may be called the Indian Naval Armament Act, 1923.

(*2*) It extends to the whole of British India, and applies also to all subjects and servants of His Majesty in other parts of India.

(*3*) It shall come into force on such date as the Governor General in Council May, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "competent Court" means the High Court or such other Court having unlimited original civil jurisdiction as the Governor General in Council may declare to be a competent Court for the purposes of this Act ;

(*b*) "ship" means any boat, vessel, battery or craft, whether wholly or partly constructed, which is intended to float or is capable of floating, on water, and includes all equipment belonging to any ship ; and

(*c*) "the Treaty" means those Articles of the Treaty for the Limitation of Naval Armament signed at Washington on behalf of His Majesty on the sixth day of February 1922, which are set out in the Schedule.

Restriction on building or equipping vessels of war

3. No person shall, except under and in accordance with the conditions of a licence granted under this Act,—

(*a*) build any vessel of war, or alter, arm or equip any ship so as to adapt her for use as a vessel of war ; or

(*b*) despatch or deliver, or allow to be despatched or delivered, from any place in British India any ship which has been, either wholly or partly, built, altered, armed or equipped as a vessel of war in any part of His Majesty's Dominions or in a State in India otherwise than under and in accordance with any law for the time being in force in that part or State.

Licences

4. (*1*) A license under this Act for any of the purposes specified in section 3 may be granted by the Local Government, and shall not be refused unless it appears to the Local Government that such refusal is necessary for the purpose of securing the observance of the obligations imposed by the Treaty ; and, where a licence is granted subject to conditions, the conditions shall be such only as the Local Government may think necessary for the purpose aforesaid.

(*2*) An application for a licence under this section shall be in such form and shall be accompanied by such designs and particulars as the Local Government may, by general or special order, require.

Offences against the Act.

5. (*1*) If any person contravenes any of the provisions of section 3, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(*2*) Where an offence punishable under sub-section (*1*) has been committed by a company or corporation, every director and manager of such company or corporation shall be punishable thereunder unless he proves that the act constituting the offence took place without his knowledge and consent.

(*3*) Nothing contained in section 517 or section 518 or section 520 of the Code of Criminal Procedure, 1898, shall be deemed to authorize the destruction or confiscation under the order of any Criminal Court of any ship which is liable to forfeiture under this Act or of any part of such ship. V of 1898.

Liability of ships to forfeiture.

6. Any ship which has been, either wholly or partly, built, altered, armed, or equipped as a vessel of war in British India in contravention of section 3, or in any other part of His Majesty's Dominions or any State in India in contravention of any like provision of law in force in that part or State, shall, if found in British India, be liable to forfeiture under this Act.

Seizure, detention and search of ships.

7. (*1*) Where a ship is liable to forfeiture under this Act,—

(*a*) any Presidency Magistrate or Magistrate of the first class, or

(*b*) any commissioned officer on full pay in the military, naval or air service of His Majesty, or any gazetted officer of the Royal Indian Marine Service, or

(*c*) any officer of customs or police-officer not below such rank as may be designated in this behalf by the Governor General in Council,

may seize such ship and detain it, and, if the ship is found at sea within the territorial waters of British India, may bring it to any convenient port in British India.

(*2*) Any officer taking any action under sub-section (*1*) shall forthwith report the same through his official superiors to the Local Government.

(*3*) The Local Government shall, within thirty days of the seizure, either cause the ship to be released or make or cause to be made, in the manner hereinafter provided, an application for the forfeiture thereof, and may make such orders for the temporary disposal of the ship as it thinks suitable.

Procedure in forfeiture of ships.

8. (*1*) An application for the forfeiture of a ship under this Act may be made by, or under authority from, the Local Government to any competent Court within the local limits of whose jurisdiction the ship is for the time being.

(*2*) On receipt of any such application, the Court shall cause notice thereof and of the date fixed for the hearing of the application to be served upon all persons appearing to it to have an interest in the ship, and may give such directions for the temporary disposal of the ship as it thinks fit.

(*3*) For the purpose of disposing of an application under this section, the Court shall have the same powers and follow, as nearly as may be, the same procedure as it respectively has and follows for the purpose of the trial of suits under the Code of Civil Procedure, 1908, and any order made by the Court under this section shall be deemed to be a decree, and the provisions of the said Code in regard to the execution of decrees shall, as far as they are applicable, apply accordingly. V of 1908.

(*4*) Where the Court is satisfied that the ship is liable to forfeiture under this Act, it shall pass an order forfeiting the ship to His Majesty:

Provided that, where any person having an interest in the ship proves to the satisfaction of the Court that he has not abetted, or connived at, or by his negligence facilitated, in any

way, a contravention of section 3 in respect of the ship, and such ship has not been built as a vessel of war, it may pass such other order as it thinks fit in respect of the ship or, if it be sold, of the sale proceeds thereof :

Provided, further, that in no case shall any ship which has been altered, armed or equipped as a vessel of war be released until it has been restored, to the satisfaction of the Local Government, to such condition as not to render it liable to forfeiture under this Act.

(5) The Local Government or any person aggrieved by any order of a Court, other than a High Court, under this section may, within three months of the date of such order, appeal to the High Court.

Disposal of forfeit.

9. Where a ship has been forfeited to His Majesty under section 8, it may be disposed of in such manner as the Local Government, subject to the control of the Governor General in Council, directs :

Provided that, where the ship is sold under this section, due regard shall be had to the obligations imposed by the Treaty.

Special proof of relevant facts.

10. If, in any trial, appeal or other proceeding under the foregoing provisions of this Act, any question arises as to whether a ship is a vessel of war, or whether any alteration, arming or equipping of a ship is such as to adapt it for use as a vessel of war, the question shall be referred to and determined by the Governor General in Council, whose decision shall be final and shall not be questioned in any Court.

Penalties for proceeding to sea after seizure.

11. (*1*) Where a ship which has been seized or detained under section 7 or section 8 and has not been released by competent authority under this Act proceeds to sea, the master of the ship shall be punishable with fine which may extend to one thousand rupees, and the owner and any person who sends the ship to sea shall be likewise so punishable unless such owner or person proves that the offence was committed without his knowledge and consent.

(*2*) Where any ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty any officer empowered by this Act to seize and detain the ship, the owner and master shall further each be liable, on the order of the Court trying an offence punishable under sub-section (*1*), to pay all the expenses of and incidental to such officer being taken to sea, and shall further be punishable with fine which may extend to one hundred rupees for every day until such officer returns or until such time as would enable him after leaving the ship to return to the port from which he was taken.

(*3*) Any expenses ordered to be paid under sub-section (*2*) may be recovered in the manner provided in the Code of Criminal Procedure, 1898, for the recovery of a fine. V of 1898.

Power to enter dockyards, etc.

12. (*1*) Any person empowered by this Act to seize and detain any ship may, at any reasonable time by day or night, enter any dockyard, shipyard or other place and make inquiries respecting any ship which he has reason to believe is liable to forfeiture under this Act, and may search such ship with a view to ascertaining whether the provisions of this Act have been or are being duly observed in respect thereof, and every person in charge of or employed in such place shall on request be bound to give the person so empowered all reasonable facilities for such entry and search and for making such inquiries.

(*2*) The provisions of sections 101, 102 and 103 of the Code of Criminal Procedure, 1898, shall apply in the case of all searches made under this section. V of 1898.

Courts by which and conditions subject to which offences may be tried.

13. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall proceed to the trial of any offence punishable under this Act, and no Court shall proceed to the trial of any such offence except on complaint made by, or under authority from, the Local Government.

Indemnity.

14. No prosecution, suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

THE SCHEDULE.

(*See section 2.*)

ARTICLES OF TREATY FOR THE LIMITATION OF NAVAL ARMAMENT.

ARTICLE V.

No capital ship exceeding 35,000 tons (35,560 metric tons) standard displacement shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers.

ARTICLE VI.

No capital ship of any of the Contracting Powers shall carry a gun with a calibre in excess of 16 inches (406 millimetres).

ARTICLE IX.

No aircraft carrier exceeding 27,000 tons (27,432 metric tons) standard displacement shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers.

ARTICLE X.

No aircraft carrier of any of the Contracting Powers shall carry a gun with a calibre in excess of 8 inches (203 millimetres). Without prejudice to the provisions of Article IX, if the armament carried includes guns exceeding 6 inches (152 millimetres) in calibre the total number of guns carried, except anti-aircraft guns and guns not exceeding 5 inches (127 millimetres), shall not exceed ten. If alternatively the armament contains no guns exceeding 6 inches (152 millimetres) in calibre, the number of guns is not limited. In either case the number of anti-aircraft guns and of guns not exceeding 5 inches (127 millimetres) is not limited.

ARTICLE XI.

No vessel of war exceeding 10,000 tons (10,160 metric tons) standard displacement, other than a capital ship or aircraft carrier, shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers. Vessels not specifically built as fighting ships nor taken in time of peace under Government control for fighting purposes, which are employed on fleet duties or as troop transports or in some other way for the purpose of assisting in the prosecution of hostilities otherwise than as fighting ships, shall not be within the limitations of this Article.

ARTICLE XII.

No vessel of war of any of the Contracting Powers, hereafter laid down, other than a capital ship, shall carry a gun with a calibre in excess of 8 inches (203 millimetres).

ARTICLE XIV.

No preparations shall be made in merchant ships in time of peace for the installation of warlike armaments for the purpose of converting such ships into vessels of war, other than the necessary stiffening of decks for the mounting of guns not exceeding 6-inch (152 millimetres) calibre.

ARTICLE XV.

No vessel of war constructed within the jurisdiction of any of the Contracting Powers for a non-Contracting Power shall exceed the limitations as to displacement and armament prescribed by the present Treaty for vessels of a similar type which may be constructed by or for any of the Contracting Powers, provided, however, that the displacement for aircraft carriers constructed for a non-Contracting Power shall in no case exceed 27,000 tons (27,432 metric tons) standard displacement.

ARTICLE XVI.

If the construction of any vessel of war for a non-Contracting Power is undertaken within the jurisdiction of any of the Contracting Powers, such Power shall promptly inform the other Contracting Powers of the date of the signing of the contract and the date on which the keel of the ship is laid; and shall also communicate to them the particulars relating to the ship prescribed in Chapter II, Part 3, Section 1 (*b*), (4) and (5).

ARTICLE XVIII.

Each of the Contracting Powers undertakes not to dispose by gift, sale or any mode of transfer of any vessel of war in such a manner that such vessel may become a vessel of war in the navy of any foreign Power.

CHAPTER II.—PART 3.—SECTION I.

(*b*) Each of the Contracting Powers shall communicate promptly to each of the other Contracting Powers the following information :—

(4) The standard displacement in tons and metric tons of each new ship to be laid down, and the principal dimensions, namely, length at waterline, extreme beam at or below waterline, mean draught at standard displacement.

(5) The date of completion of each new ship and its standard displacement in tons and metric tons, and the principal dimensions, namely, length at waterline, extreme beam at or below water-line, mean draught at standard displacement, at time of completion.

PART 4.—DEFINITIONS.

For the purposes of the present Treaty, the following expressions are to be understood in the sense defined in this Part.

Capital Ship.

A capital ship, in the case of ships hereafter built, is defined as a vessel of war, not an aircraft carrier, whose displacement exceeds 10,000 tons (10,160 metric tons) standard displacement, or which carries a gun with a calibre exceeding 8 inches (203 millimetres).

Aircraft Carrier.

An aircraft carrier is defined as a vessel of war with a displacement in excess of 10,000 tons (10,160 metric tons) standard displacement designed for the specific and exclusive purpose of carrying aircraft. It must be so constructed that aircraft can be launched therefrom and landed thereon, and not designed and constructed for carrying a more powerful armament than that allowed to it under Article IX or Article X, as the case may be.

Standard Displacement.

The standard displacement of a ship is the displacement of the ship complete, fully manned, engined, and equipped ready for sea, including all armament and ammunition, equipment, outfit, provisions and fresh water for crew, miscellaneous stores and implements of every description that are intended to be carried in war, but without fuel or reserve feed water on board.

The word "ton" in the present Treaty, except in the expression "metric tons," shall be understood to mean the ton of 2,240 pounds (1,016 kilo).

Vessels now completed shall retain their present ratings of displacement tonnage in accordance with their national system of measurement. However, a Power expressing displacement in metric tons shall be considered for the application of the present Treaty as owning only the equivalent displacement in tons of 2,240 pounds.

A vessel completed hereafter shall be rated at its displacement tonnage when in the standard condition defined herein.

H. MONCRIEFF SMITH,
Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, APRIL 18, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 16th March, 1923, and is hereby promulgated for general information :—

ACT NO. XVI OF 1923.

An Act further to amend the Government Savings Banks Act, 1873.

WHEREAS it is expedient further to amend the Government Savings Banks Act, 1873 ; It is hereby enacted as follows :— V of 1873

Short title. **1.** This Act may be called the Government Savings Banks (Amendment) Act, 1923.

Amendment of section 3, Act V of 1873. **2.** In section 3 of the Government Savings Banks Act, 1873 (hereinafter referred to as the said Act), for the definition of "Secretary" the following shall be substituted, namely :— V of 1873.

"'Secretary' means, in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Savings Bank is situate."

Substitution of new section for section 4, Act V of 1873. **3.** For section 4 of the said Act the following section shall be substituted, namely :—

"4. Payment on death of depositor. If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate Act, 1889, is not within three months of the death of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is, then— VII of 1889.

(*a*) if the deposit does not exceed three thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, or

(*b*) if the deposit does not exceed one hundred rupees, any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor General in Council, may, subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate."

Amendment of sections 6 and 7, Act V of 1873. **4.** In sections 6 and 7 of the said Act, after the words "Secretary of any such Bank" the words "or any officer empowered under section 4" shall be inserted.

H. MONCRIEFF SMITH,

Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, APRIL 25, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 16th March, 1923, and is hereby promulgated for general information :—

ACT NO. XII OF 1923.

An Act further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings; It is hereby enacted as follows :— V of 1898. IX of 1874. IX of 1908. C. P. Act I of 1917.

Short title and commencement.

1. (*1*) This Act may be called the Criminal Law Amendment Act, 1923.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint.

Amendment of section 4, Code of Criminal Procedure, 1898.

2. (*1*) In sub-section (*1*) of section 4 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code), for clause (*i*) the following clause shall be substituted, namely :— V of 1898.

European British subject.

"(*i*) European British subject" means—

(*i*) any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any Colony, or

(*ii*) any subject of His Majesty who is the child or grandchild of any such person by legitimate descent."

(2) In clause (*j*) of the same sub-section, after the word "Rangoon" the words "and the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind" shall be inserted.

Amendment of section 22, Code of Criminal Procedure, 1898.

3. In section 22 of the said Code, the words and brackets "(other than the presidency towns)" shall be omitted, and for the words "European British subjects" the words "persons resident within British India and not being the subjects of any foreign State" shall be substituted.

Repeal of sections 23 and 24, Code of Criminal Procedure, 1898.

4. Sections 23 and 24 of the said Code shall be omitted.

Amendment of section 29, Code of Criminal Procedure, 1898.

5. In sub-section (*1*) of section 29 of the said Code, for the words and figures "provisions of section 447" the words "other provisions of this Code" shall be substituted.

Insertion of new section 29A in the Code of Criminal Procedure, 1898.

6. After section 29 of the said Code the following section shall be inserted, namely :—

Trial of European British subjects by second and third class Magistrates.

"29A. No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such."

Insertion of new section 34A in the Code of Criminal Procedure, 1898.

7. After section 34 of the said Code the following section shall be inserted, namely : —

Sentences which Courts and Magistrates may pass upon European British subjects.

"34A. Notwithstanding anything contained in sections 31, 32 and 34—

(*a*) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and

(*b*) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both."

Repeal of section 111, Code of Criminal Procedure, 1898.

8. Section 111 of the said Code shall be omitted.

Amendment of section 206, Code of Criminal Procedure, 1898.

9. In sub-section (*1*) of section 206 of the said Code the words and figures "Subject to the provision of section 443" shall be omitted.

Repeal of section 214, Code of Criminal Procedure, 1898.

10. Section 214 of the said Code shall be omitted.

Amendment of section 215, Code of Criminal Procedure, 1898.

11. In section 215 of the said Code, the words and figures "or section 214" shall be omitted.

Amendment of section 266, Code of Criminal Procedure, 1898.

12. In section 266 of the said Code, after the word "includes" the following words shall be inserted, namely :— "the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind and".

Amendment of section 274, Code of Criminal Procedure, 1898.

13. In sub-section (*2*) of section 274 of the said Code, for the word "three" the word "five" shall be substituted ; and to the same sub-section the following proviso shall be added, namely :—

"Provided that, where any accused person is charged with an offence punishable with death, the jury shall consist of not less than seven persons and, if practicable, of nine persons."

Substitution of new section for section 275, Code of Criminal Procedure, 1898.

14. For section 275 of the said Code the following section shall be substituted, namely :—

Jury for trial of European and Indian British subjects and others.

"275. (*1*) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans and, in the case of an Indian British subject, of Indians.

(*2*) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans."

Amendment of section 284, Code of Criminal Procedure, 1898.

15. In section 284 of the said Code, for the words "two or more shall be chosen, as the Judge thinks fit," the words "not less than three and, if practicable, four shall be chosen" shall be substituted.

Insertion of new section 284A in the Code of Criminal Procedure, 1898.

16. After section 284 of the said Code the following section shall be inserted, namely :—

Assessors for trial of European and Indian British subjects and others.

"284A. (*1*) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or, where there are several European British subjects accused or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

(*2*) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, all the assessors shall, if practicable and if such European or American before the first assessor is chosen so requires, be persons who are Europeans or Americans."

Insertion of new section 285A in the Code of Criminal Procedure, 1898.

17. After section 285 the following heading and section shall be inserted, namely :—

"DD.—*Joint trials.*

Trial of European or Indian British subject or European or American jointly accused with others

285A. In any case in which an European or American is accused jointly with a person not being an European or American, or an Indian British subject is accused jointly with a person not being an Indian, and such European, Indian British subject or American is committed for trial before a Court of Session, he and such other person may be tried together, but if he requires to be tried in accordance with the provisions of section 275 or section 284A and is so tried, and the other person accused requires to be tried separately, such other person shall be tried separately in accordance with the provisions of this Chapter."

Substitution of new section for section 312, Code of Criminal Procedure, 1898.

18. For section 312 of the said Code the following section shall be substituted, namely :—

Number of special jurors.

"312. The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors list :

Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed."

Amendment of section 326, Code of Criminal Procedure, 1898.

19. (*1*) In sub-section (*1*) of section 326 of the said Code, after the words "for any such trial" the following words shall be added, namely :—

"and including, where any accused person is an European or an American, as many Europeans or Americans as may be required for the purpose of choosing jurors or assessors for the trial."

(*2*) To the same section the following sub-sections shall be added, namely :—

"(*3*) Where the accused requires and is entitled to be tried under the provisions of section 275, there shall be chosen by lot, in the manner prescribed by or under section 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may be, has been obtained :

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

(4) Where, under the proviso to sub-section (3), the Court proposes to summon as a juror any person in His Majesty's Army, the provisions of section 317 shall apply in like manner as they apply for the purpose of the summoning of military jurors for a trial under section 316."

Repeal of section 336, Code of Criminal Procedure, 1898.

20. Section 336 of the said Code shall be omitted.

Amendment of section 390, Code of Criminal Procedure, 1898

21. In section 390 of the said Code, after the word "shall" the words "subject to the provisions of section 391" shall be inserted.

Amendment of section 391, Code of Criminal Procedure, 1898.

22. In sub-section (1) of section 391 of the said Code, for the words "is sentenced to whipping in addition to imprisonment in a case which is subject to appeal" the following shall be substituted, namely :—

"(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(b) is sentenced to whipping in addition to imprisonment."

Amendment of section 408, Code of Criminal Procedure, 1898.

23. In section 408 of the said Code, clause (a) of the proviso shall be omitted.

Amendment of section 413, Code of Criminal Procedure, 1898.

24. In section 413 of the said Code, the words "or the District Magistrate or other Magistrate of the first class" and the words "or of whipping only" shall be omitted; and after the words "one month only or" the words "in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence" shall be inserted.

Amendment of section 414, Code of Criminal Procedure, 1898.

25. In section 414 of the said Code, the words "of imprisonment not exceeding three months only, or" and the words "or of whipping only" shall be omitted.

Repeal of section 416, Code of Criminal Procedure, 1898.

26. Section 415 of the said Code shall be omitted.

Substitution of new Chapter for Chapter XXXIII, Code of Criminal Procedure, 1898.

27. For Chapter XXXIII, including sections 443 to 463 of the said Code the following Chapter and sections shall be substituted, namely :—

"CHAPTER XXXIII.

SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

Determination regarding applicability of this Chapter.

443. (1) Where, in the course of the trial outside a presidency-town of any offence punishable with imprisonment, the accused person, at any time before he is committed for trial under section 213 or is asked to show cause under section 242 or enters on his defence under section 256, as the case may be, claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case, after making such inquiry as he thinks necessary, and after allowing the accused person reasonable time within which to adduce evidence in support of his claim, shall if he is satisfied—

(a) that the complainant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects, or

(b) that, in view of the connection with the case of both an European British subject and an Indian British subject, it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter,

record a finding that the case is a case which ought to be tried under the provisions of this Chapter, or, if he is not so satisfied, record a finding that it is not such a case.

(2) Where the Magistrate rejects the claim, the person by whom it was made may appeal to the Sessions Judge, and the decision of the Sessions Judge thereon shall be final and shall not be questioned in any Court in appeal or revision.

(3) Where the Magistrate rejects the claim, he shall stay the proceedings until the expiration of the period allowed for the presentation of the appeal or, if an appeal is presented, until it has been decided.

Definition of "complainant."

444. For the purposes of section 443, "complainant" means any person making a complaint or, in relation to any case of which cognizance is taken under clause (b) of section 190, sub-section (1), any person who has given information relating to the commission of the offence within the meaning of section 154:

Provided that a Public Prosecutor, a public servant, a member, officer or servant of any local authority, a railway servant as defined in section 3 of the Indian Railways Act, 1890, or an officer or servant of any company, association or other body to which the Local Government may, by general or special order published in the local official Gazette, declare the provisions of this section to apply, shall not, by reason only of the fact that he has made a complaint of, or given information of, an offence in his capacity as such Public Prosecutor, public servant, railway servant, member, officer or servant, be deemed to be a complainant within the meaning of this section, nor shall a police-officer be so deemed by reason only of the fact that a report under section 173 relating to a case has been made by or through him. IX of 1890

Procedure in summons cases.

445. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a summons-case, the Magistrate trying the same shall direct that the case be referred to a Bench of two Magistrates and shall send a copy of such order to the District Magistrate, who shall forthwith provide for the constitution of a Bench of two Magistrates of the first class, of whom one shall be an European and the other an Indian, for the trial of the case.

(2) Where the Magistrates constituting the Bench by which a case is tried under this section differ in opinion, the case, together with their opinions thereon, shall be laid before the Sessions Judge, who may examine any party or recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall thereafter pass such judgment, sentence or order in the case as he thinks fit and as is according to law.

(3) Any person convicted by a Bench under this section shall have the same right of appeal as if he had been convicted by a Magistrate of the first class, and any person convicted by a Sessions Judge under sub-section (2) shall have the same right of appeal to the High Court as if he had been convicted by the Sessions Judge at a trial held by the Sessions Judge under this Code.

(4) In any case in which it is impracticable to constitute a Bench in accordance with the provisions of sub-section (1) in any district, the District Magistrate shall transfer the case for trial by a like Bench to such other district as the High Court may, by general or special order, direct.

(5) Notwithstanding anything contained in this section, the Local Government may, by notification in the local official Gazette, direct that all summons-cases tried under the provisions of this Chapter in any district specified in the notification shall be tried as if they were warrant-cases in accordance with the provisions hereinafter in this Chapter laid down for the trial of warrant-cases.

Procedure in warrant-cases.

446. (*1*) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a warrant-case, the Magistrate inquiring into or trying the case shall, if he does not discharge the accused under section 209 or section 253, as the case may be, commit the case for trial to the Court of Session, whether the case is or is not exclusively triable by that Court.

(*2*) Where an accused is committed to the Court of Session under sub-section (*1*), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of section 275, and the provisions of that section and the other provisions of Chapter XXIII, so far as they are applicable, shall apply accordingly :

Provided that where the trial before the Court of Session would, in the ordinary course be with the aid of assessors and the accused, or all of them jointly, require to be tried in accordance with the provisions of section 284A, the trial shall be held with the aid of assessors all of whom shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

Court to inform accused persons of their rights in certain cases.

447. If at any stage of an inquiry or trial under this Code it appears to the Magistrate that the case is or might be held to be a case which ought to be tried under the provisions of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter.

References to Sessions Judge to be construed as references to High Court in Rangoon.

448. For the purpose of the trial in Rangoon of any person under the provisions of this Chapter, references to the Sessions Judge shall be construed as references to the High Court of Judicature at Rangoon.

Special provisions relating to appeal

449. (*1*) Where—

(*a*) a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter, or

(*b*) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, or

(*c*) a case is tried by jury in the High Court in a presidency-town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a presidency-town, have been triable under the provisions of this Chapter,

then, notwithstanding anything contained in section 418 or section 423, sub-section (*2*), or in the letters patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law.

(*2*) Notwithstanding anything contained in the letters patent of any High Court, the Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original order of acquittal passed by the High Court in any such trial as is referred to in sub-section (*1*).

(*3*) An appeal under sub-section (*1*) or sub-section (*2*) shall, where the High Court consists of more than one judge, be heard by two judges of the High Court."

Amendment of section 478, Code of Criminal Procedure, 1898.

28. In sub-section (*2*) of section 478 of the said Code, the words and figures "subject to the provisions of section 443" shall be omitted; and, after the word and figures "Chapter XVIII" the words and figures "and of Chapter XXXIII in cases where that Chapter applies" shall be inserted.

Amendment of section 480, Code of Criminal Procedure, 1898.

29. In section 480 of the said Code,—

(*a*) in sub-section (*1*), the words "whether he is a European British subject or not" shall be omitted; and

(*b*) in sub-section (*2*), for the words and figures "section 443 or section 444" the words and figures "section 29A or in Chapter XXXIII" shall be substituted.

Amendment of section 491, Code of Criminal Procedure, 1898.

30. (*1*) In sub-section (*1*) of section 491 of the said Code,—

(*a*) for the words "Any of the High Courts of Judicature at Fort William, Madras and Bombay" the words "Any High Court" shall be substituted; and

(*b*) for the words "ordinary original civil jurisdiction" the words "appellate criminal jurisdiction" shall be substituted.

(*2*) In sub-section (*2*) of the same section for the words "Each of the said High Courts" the words "The High Court" shall be substituted.

Insertion of new section 491A in the Code of Criminal Procedure, 1898.

31. In Chapter XXXVII of the said Code, after section 491 the following section shall be inserted, namely :—

Powers of High Court outside the limits of appellate jurisdiction.

"491A. Any High Court established by letters patent may exercise the powers conferred by section 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the Governor General in Council may direct."

Insertion of new section 526A in the Code of Criminal Procedure, 1898.

32. After section 526 of the said Code the following section shall be inserted, namely :—

High Court to transfer for trial to itself in certain cases.

"526A. (*1*) Where any person subject to the Naval Discipline Act or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (*a*) to section 41 of the Army Act, the Advocate General shall, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall thereafter proceed to try the case by jury.

29 and 30 Vic. c. 109. 44 and 45 Vic. c. 58.

(*2*) The Governor General in Council may, by notification in the Gazette of India, declare any officer to be the competent authority for the purpose of issuing instructions under sub-section (*1*) in regard to any class of cases specified in the notification."

Insertion of new Chapter XLIVA in the Code of Criminal Procedure, 1898.

33. After Chapter XLIV of the said Code the following Chapter shall be inserted, namely :—

"CHAPTER XLIVA.

SUPPLEMENTARY PROVISIONS RELATING TO EUROPEAN AND INDIAN BRITISH SUBJECTS AND OTHERS.

Procedure of claim of a person to be dealt with as European or Indian British subject, or as European or American.

528A. (*1*) Where, in any case to which the provisions of Chapter XXXIII do not apply, any person claims to be dealt with as an European or Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, or an Indian British subject or an European or an American as the case may be, and shall deal with him accordingly.

(*2*) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the Court of Session, and such person repeats the

claim before such Court, such Court shall, after such further inquiry if any as it thinks fit, decide the claim, and shall deal with such person accordingly.

(3) When any Court before which any person is tried rejects any such claim as aforesaid the decision shall form a ground of appeal from the sentence or order passed in such trial.

Failure to plead status a waiver.

528B. If in any such case an European or Indian British subject or an European (other than an European British subject) or an American does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before and rejected by the committing Magistrate, it is not repeated before the Court to which such person is committed, he shall be held to have relinquished his right to be dealt with as an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall not assert it in any subsequent stage of the case.

Trial of person as belonging to class to which he does not belong.

528C. Where a person, not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject, is dealt with as an Indian British subject or, not being an European (other than an European British subject) or American, is dealt with as an European or American, and such person does not object, the inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

528D. (1) Unless there is something repugnant in the context, all enactments made by the Governor General in Council or the Indian Legislature which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects."

Amendment of section 534, Code of Criminal Procedure, 1898.

34. For section 534 of the said Code the following section shall be substituted, namely :—

Omission to give information under section 447.

"534. An omission to inform under section 447 any person of his rights under Chapter XXXIII shall not affect the validity of any proceeding."

Amendment of section 4, Act IX of 1874.

35. In section 4 of the European Vagrancy Act, 1874 (hereinafter referred to as the said Act), for the words "the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure" the words "the nearest Magistrate of the first class" shall be substituted. IX of 1874.

Amendment of sections 5, 8 and 29, Act IX of 1874.

36. In sections, 5, 8 and 29 of the said Act, for the word "Justice" the words "Magistrate of the first class" shall be substituted. V of 1898

Amendment of sections 7, 9, 10 and 24, Act IX of 1874.

37. In sections 7, 9, 10 and 24 of the said Act, for the words "Justice of the Peace exercising powers as aforesaid" the words "Magistrate of the first class" shall be substituted; and, in section 10 of the said Act, the words "Justice of the Peace," where they first occur, shall be omitted.

Amendment of section 19, Act IX of 1874.

38. In section 19 of the said Act, for the words "Justice of the Peace," wherever they occur, the words "Magistrate of the first class" shall be substituted.

Amendment of section 30, Act IX of 1874.

39. In section 30 of the said Act, the words "beyond the limits of the said towns", the words and brackets "(other than those contained in Chapter XXXVIII of the same Code)", and the words "If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section" shall be omitted.

Amendment of section 35, Act IX of 1874.

40. In section 35 of the said Act, the words "Justices of the Peace exercising the powers of a Magistrate of the first class" shall be omitted.

Amendment of the First Schedule to Act IX of 1874.

41. In the First Schedule to the said Act, for the words "Justice of the Peace for exercising the powers of a Magistrate of the class" the words "Magistrate of the first class" shall be substituted.

Amendment of First Schedule to Act IX of 1908.

42. In the First Schedule to the Indian Limitation Act, 1908, the following item shall be inserted after item 150, namely:— IX of 1908

150A.—Under the Code of Criminal Procedure, 1898, from a finding rejecting a claim under section 443 of that Code.	Seven days ...	The date of the finding.

Amendment of section 3, Central Provinces Courts Act, 1917.

43. In section 3 of the Central Provinces Courts Act, 1917, the words "except in reference to proceedings against European British subjects and persons jointly charged with the European British subjects" shall be omitted. C. P. Act I of 1917.

H. MONCRIEFF SMITH,

Secretary to the Government of India.

Amendment of section 20, Act IX of 1908.

3. (*a*) For sub-section (*1*) of section 20 of the said Act, the following shall be substituted, namely :—

"where anything is paid either as interest or part of the principal of a debt or legacy before the prescribed period by the debtor or by his agent duly authorised in writing in this behalf, the entry as to such payment being signed and dated by the payer, a fresh period of limitation shall be computed from the date of payment."

(*b*) Sub-section (*2*) of the same section shall be omitted.

Amendment of section 21, Act IX of 1908.

4. In sub-section (*1*) of section 21 of the said Act, after the word "authorised" wherever it occurs, the words "in writing" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The object of the proposed amendment is to decrease litigation, perjury, forgery and fraud. At present many facts are required to be proved by oral evidence which the Courts may or may not believe and the result is always uncertain.

Under the proposed amendment, a clear and unconditional acknowledgment duly signed and dated by the person liable or by his agent duly authorized in writing will be required to extend time. Debtors should not be taken by surprise by an ambiguous or undated writing which might be used to extend the period of limitation.

In section 20, there is always a dispute whether the payment was made on account of interest as such. Under the amended section, part payment of principal and payment of interest have been placed on equal footing. Similar amendment has been made in section 21. Authority of an agent to extend time under any of the sections referred to in this Bill must always be in writing and not oral.

I hope the proposed amendments, if passed into law, will considerably reduce litigation and the multiplicity of witnesses will be avoided.

GIRDHARILAL AGARWALA, M.L.A.

Dated the 7th December, 1922.

H. MONCRIEFF SMITH,
Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, MAY 2, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 16th March, 1923, and is hereby promulgated for general information :—

ACT No. XIV OF 1923.

An Act to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India.

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the improvement and development of the growing, marketing and manufacture of cotton in India; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Indian Cotton Cess Act, 1923.

(*2*) It extends to the whole of British India (including British Baluchistan and the Sonthal Parganas), except Aden.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Collector" means, in reference to cotton consumed in a mill in British India, the Collector of the district in which the mill is situated ;

(*b*) "the Committee" means the Indian Central Cotton Committee constituted under this Act ;

(*c*) "cotton" means raw cotton, whether baled or loose, which has been ginned ;

(*d*) "Customs-collector" and "customs-port" mean respectively a Customs-collector and a customs-port as defined in section 3 of the Sea Customs Act, 1878 VIII of 1878.

(*e*) "mill" means any place which is a factory as defined in section 2 of the Indian Factories Act, 1911, and XII of 1911. in which cotton is converted into yarn or thread either for sale as such or for conversion into cotton goods as defined in section 3 of the Cotton Duties Act, 1896 ; and II of 1896.

(*f*) "prescribed" means prescribed by rules made under this Act.

Imposition of cotton cess.

3. There shall be levied and collected on all cotton produced in India and either exported from any customs-port to any port outside British India or consumed in any mill in British India a cess at the rate of two annas per standard bale of four-hundred pounds avoirdupois, or in the case of unbaled cotton, of six pies per hundred pounds avoirdupois.

Provided that the cess shall be levied and collected at double the above rates until the expiry of three years from the commencement of this Act.

Constitution of Indian Central Cotton Committee.

4. As soon as may be after the commencement of this Act, the Governor General in Council shall cause to be constituted a Committee consisting of the following members, namely :—

(i) the Agricultural Adviser to the Government of India ;

(ii) six persons representing, respectively, the Agricultural Departments of the Local Governments of Madras, Bombay, the United Provinces, the Punjab, the Central Provinces and Burma and nominated respectively by those Local Governments ;

(iii) the Director General of Commercial Intelligence ;

(iv) nine persons nominated, respectively, by the East India Cotton Association, the Bombay Millowners' Association, the Bombay Chamber of Commerce, the Indian Merchants Chamber, Bombay, the Karachi Chamber of Commerce, the Ahmedabad Millowners' Association, the Tuticorin Chamber of Commerce, the Upper India Chamber of Commerce, and the Empire Cotton Growing Corporation ;

(v) four persons representing the cotton manufacturing or cotton ginning industry, of whom two shall be nominated by the Local Government of the Central Provinces and one by each of the Local Governments of Madras and the Punjab ;

(vi) one person nominated by the Local Government of Bengal ;

(vii) one person having knowledge of co-operative banking nominated by the Governor General in Council ;

(viii) ten persons representing the cotton growing industry in Madras, Bombay, the United Provinces, the Punjab, and the Central Provinces and Berar, of whom two shall be nominated by each of the Local Governments of those Provinces ;

(ix) three persons nominated, respectively, by the Government of His Exalted Highness the Nizam of the Hyderabad State, by the Durbar of the Baroda State and by the Durbar of the Gwalior State ;

(x) one person nominated jointly by the Durbars of the Indian States in Rajputana and Central India ; and

(xi) such additional persons as the Governor General in Council may, by notification in the Gazette of India, appoint :

Provided that, if within the period prescribed in this behalf, any authority or other person fails to make any nomination which it or he is entitled to make under this section, the Governor General in Council may himself appoint a member or members, as the case may be, to fill the vacancy or vacancies.

Incorporation of the Committee.

5. (1) The Committee so constituted shall be a body corporate by the name of the Indian Central Cotton Committee, having perpetual succession and a common seal with power to acquire and hold property both moveable and immoveable and to contract, and shall by the said name sue and be sued.

(2) The Agricultural Adviser to the Government of India shall be *ex-officio* President of the Committee.

(3) The Secretary of the Committee shall be a person, not being a member of the Committee, appointed by the Governor General in Council.

Delivery of monthly returns.

6. (*1*) The owner of every mill shall furnish to the Collector, on or before the seventh day of each month, a return stating the total amount of cotton consumed or brought under process in the mill during the preceding month, together with such further information in regard thereto as may be prescribed :

Provided that no return shall be required in regard to cotton consumed or brought under process before the commencement of this Act.

(*2*) Every such return shall be made in such form and shall be verified in such manner as may be prescribed.

Collection of cess by Collector.

7. (*1*) On receiving any return made under section 6, the Collector shall assess the cotton cess payable in respect of the period to which the return relates, and if the amount has not already been paid shall cause a notice to be served upon the owner of the mill requiring him to make payment of the amount assessed within ten days of the service of the notice.

(*2*) If the owner of any mill fails to furnish in due time the return referred to in section 6 or furnishes a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount payable by him in such manner, if any, as may be prescribed, and the provisions of sub-section (*1*) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the owner :

Provided that, in the case of a return which he has reason to believe is incorrect or defective, the Collector shall not assess the cess at an amount higher than that at which it is assessable on the basis of the return without giving to the owner a reasonable opportunity of proving the correctness and completeness of the return.

(*3*) A notice under sub-section (*1*) may be served on the owner of a mill either by post or by delivering it or tendering it to the owner or his agent at the mill.

Collection of cess on exported cotton.

8. In respect of cotton exported by sea, the cess shall be assessed and levied by the Customs-collector at the customs-port of export and, subject to the provisions of this Act and of any rules made thereunder, shall, for all or any of the purposes of the Sea Customs Act, 1878, be deemed to be a duty of customs. VIII of 1878.

Finality of assessment and recovery of unpaid cess.

9. (*1*) An assessment made in accordance with the provisions of section 7 or section 8 shall not be questioned in any Court.

(*2*) Any owner of a mill who is aggrieved by an assessment made under section 7 may, within three months of service of the notice referred to in sub-section (*1*) of that section, apply to the Local Government for the cancellation or modification of the assessment and, on such application, the Local Government may cancel or modify the assessment and order the refund to such owner of the whole or part, as the case may be, of any amount paid thereunder.

(*3*) Any sum recoverable under section 7 may be recovered as an arrear of land revenue.

Power to inspect mills and take copies of records and accounts.

10. (*1*) The Collector or any officer empowered by general or special order of the Local Government in this behalf shall have free access at all reasonable times during working hours to any mill or to any part of any mill.

(*2*) The Collector or any such officer may at any time, with or without notice to the owner, examine the working records, sale records and accounts of any mill and take copies of or extracts from all or any of the said records or accounts for the purpose of testing the accuracy of any return or of informing himself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder.

(*3*) Where any officer other than the Collector proposes to examine under sub-section (*2*) any record or account containing the description or formulæ of any trade process, the owner of

the mill may give to the said officer, for transmission to the Collector, a written notice of objection and the officer shall thereupon seal up the record or account pending the orders of the Collector.

Information acquired to be confidential.

11. (*1*) All such copies and extracts and all information acquired by a Collector or any other officer from an inspection of any mill or warehouse or from any return submitted under this Act shall be treated as confidential.

(*2*) If the Collector or any such officer discloses to any person other than a superior officer any such information as aforesaid without the previous sanction of the Local Government, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine:

Provided that nothing in this section shall apply to the disclosure of any such information for the purpose of a prosecution in respect of the making of a false return under this Act.

Application of proceeds of cess.

12. (*1*) On the last day of each month, or as soon thereafter as may be convenient, the proceeds of the cess recovered during that month shall, after deduction of the expenses, if any, of collection and recovery, be paid to the Committee.

(*2*) Subject to such conditions as may be prescribed, the said proceeds and any other monies received by the Committee shall be applied to meeting the expenses of the Committee and the cost of such measures as it may, with the previous approval of the Governor General in Council, decide to undertake for promoting agricultural and technological research in the interests of the cotton industry in India.

Validation.

13. No act done or proceeding taken under this Act shall be questioned on the ground merely of the existence of any vacancy in or any defect in the constitution of the Committee or the Standing Finance Sub-Committee, if any.

Dissolution of Committee.

14. The Governor General in Council may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, the Committee shall be dissolved and on the making of such declaration all funds and other property vested in the Committee shall vest in His Majesty and this Act shall be deemed to have been repealed.

Power of the Governor General in Council to make rules.

15. (*1*) The Governor General in Council may make rules for the purpose of carrying into effect all or any of the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) for prescribing the time within which nominations shall be made under section 4 whether in the first instance or on the occurrence of vacancies;

(*b*) for prescribing the term of office of the members of the Committee;

(*c*) for prescribing the circumstances in which and the authority by which any member may be removed;

(*d*) for the holding of a minimum number of meetings of the Committee during any year;

(*e*) for the maintenance by the Committee of a record of all business transacted and the submission of copies of such records to the Governor General in Council;

(*f*) for the definition of the powers of the Committee and of the Secretary to enter into contracts which shall be binding on the Committee, and the manner in which such contracts shall be executed;

(*g*) for the regulation of the travelling allowances of members of the Committee and of their remuneration, if any;

(h) for the definition of the powers of the Committee and the Secretary in respect of the appointment, promotion and dismissal of officers and servants of the Committee, and in respect of the creation and abolition of appointments of such officers or servants;

(i) for the regulation of the grant of pay and leave to officers and servants of the Committee, and the payment of leave allowances to such officers and servants, and the remuneration to be paid to any person appointed to act for any officer or servant to whom leave is granted;

(j) for the regulation of the payment of pensions, gratuities, compassionate allowances and travelling allowances to officers and servants of the Committee;

(k) for prescribing the establishment and maintenance of a provident fund for the officers and servants of the Committee, and for the deduction of subscriptions to such provident fund from the pay and allowances of such officers and servants, other than Government servants whose services have been lent or transferred to the Committee;

(l) for prescribing the preparation of budget estimates of the annual receipts and expenditure of the Committee and of supplementary estimates of expenditure not included in the budget estimates, and the manner in which such estimates shall be sanctioned and published;

(m) for defining the powers of the Committee, the Standing Finance Sub-Committee, if any, the President and the Secretary, respectively, in regard to the expenditure of the funds of the Committee, whether provision has or has not been made in the budget estimates, or by reappropriation for such expenditure, and in regard to the reappropriation of estimated savings in the budget estimates of expenditure;

(n) for prescribing the maintenance of accounts of the receipts and expenditure of the Committee and providing for the audit of such accounts;

(o) for prescribing the manner in which payments are to be made by or on behalf of the Committee, and the officers by whom orders for making deposits or investments or for withdrawals or disposal of the funds of the Committee shall be signed;

(p) for determining the custody in which the current account of the Committee shall be kept, and the bank or banks at which surplus monies at the credit of the Committee may be deposited at interest, and the conditions on which such monies may be otherwise invested;

(q) for prescribing the preparation of a statement showing the sums allotted to Provincial Departments of Agriculture or institutions not under the direct control of the Committee for expenditure on research, the actual expenditure incurred, the outstanding liabilities, if any, and the disposal of unexpended balances at the end of the year;

(r) the assessment, levy, and payment of the cotton cess in respect of cotton exported by sea; and

(s) any other matter which is to be or may be prescribed.

Power of the Committee to make rules.

16. The Committee may, with the previous sanction of the Governor General in Council, make rules, consistent with this Act and with any rules made under section 15 to provide for all or any of the following matters, namely:—

(a) for the appointment of a Standing Finance Sub-Committee and the delegation thereto of any powers exercisable under this Act by the Committee;

(b) for prescribing the method of appointment, removal and replacement and the term of office of members of the Standing Finance Sub-Committee, and for the filling of vacancies therein;

(c) for the appointment of the dates, times and places for meetings of the Committee and the Standing Finance Sub-Committee, and for regulating the procedure to be observed at such meetings ;

(d) for determining the circumstances in which security may be demanded from officers and servants of the Committee, and the amount and nature of such security in each case ;

(e) for determining the times at which, and the circumstances in which, payments may be made out of the provident fund and the conditions on which such payments shall relieve the fund from further liability ;

(f) for determining the contribution, if any, payable from the funds of the Committee to the provident fund ;

(g) for regulating generally all matters incidental to the provident fund and the investment thereof ;

(h) for defining the powers and duties of Secretary of the Committee.

Publication of rules.

17. All rules made under section 15 or section 16 shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

H. MONCRIEFF SMITH,

Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, MAY 30, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 2nd April, 1923, and is hereby promulgated for general information :—

ACT NO. XVIII OF 1923.

An Act further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870; It is hereby enacted as follows :— V of 1898. VII of 1870.

Short title

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1923.

Amendment of section 10, Code of Criminal Procedure, 1898

2. In section 10 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code),— V of 1898

(*i*) in sub-section (*2*), the words "for a period not exceeding six months" shall be omitted, and after the words "under this Code" the words "or under any other law for the time being in force," shall be inserted ; and

(*ii*) after sub-section (*2*) the following sub-section shall be added, namely :—

"(*3*) For the purposes of sections 192, sub-section (*1*), 407, sub-section (*2*), and 528, sub-sections (*2*) and (*3*), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate."

Amendment of section 18, Code of Criminal Procedure, 1898.

3. After sub-section (*2*) of section 18 of the said Code the following sub-sections shall be added, namely :—

"(*3*) A Presidency Magistrate may be appointed under this section for such term as the Local Government may, by general or special order, direct.

(*4*) The Local Government may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the Local Government may direct."

Amendment of section 21, Code of Criminal Procedure, 1898.

4. In sub-section (*2*) of section 21 of the said Code, after the words "Presidency Magistrate" the words "including Additional Chief Presidency Magistrates" shall be inserted.

Amendment of section 29, Code of Criminal Procedure, 1898.

5. In sub-section (*2*) of section 29 of the said Code, after the words "High Court or" the words "subject as aforesaid" shall be inserted.

Insertion of new section 29B in the Code of Criminal Procedure, 1898.

6. Before section 30 of the said Code the following section shall be inserted, namely :—

Jurisdiction the case juveniles.

"29B. Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the Local Government to exercise the powers conferred by section 8, sub-section (*1*), of the Reformatory Schools Act, 1897, or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby."

VIII of 1897.

Amendment of section 35, Code of Criminal Procedure, 1898.

7. (*1*) In section 35 of the said Code,-

(*i*) in sub-section (*1*), for the words "When a person is convicted at one trial of two or more distinct offences, the Court may," the following shall be substituted, namely :—

"When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code," and

XLV 1860

(*ii*) in sub-section (*3*), for the word "aggregate" the words "the aggregate of consecutive" shall be substituted.

(*2*) The explanation and illustration to this section are hereby repealed.

Amendment of section 40, Code of Criminal Procedure, 1898.

8. In section 40 of the said Code, for the word "transferred", in both places where it occurs, the word "appointed" shall be substituted, and the words "continue to" shall be omitted, and for the words "to which" the words "in which" shall be substituted.

Amendment of section 45, Code of Criminal Procedure, 1898.

9. In section 45 of the said Code,-

(*i*) in sub-section (*1*)—

(*a*) after the word "occupier", where it occurs for the second time, the words "in charge of the management of that land" shall be inserted, and for the word "obtain" the word "possess" shall be substituted ;

(*b*) to clause (*d*), after the words "suspicious circumstances," the following words shall be added, namely :—

"or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred on the disappearence from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person ;" and

(*c*) in clause (*e*), after the word "namely," the figures "231, 232, 233, 234, 235, 236, 237, 238," shall be inserted, and for the word and figures "and 460" the figures, letters and word "460, 489A, 489B, 489C and 489D," shall be substituted ; and

(*ii*) in sub-section (*3*), after the words "District Magistrate," the words "or Subdivisional Magistrate" shall be inserted ; after the word "persons" the words "with his or their consent" shall be inserted ; and for the words "to be village-headman

for the purposes of this section in any village for which there is no such headman appointed under any other law" the following shall be substituted, namely :—

"to perform the duties of a village-headman under this section whether a village headman has or has not been appointed for that village under any other law."

Amendment of section 54, Code of Criminal Procedure, 1898.

10. In sub-section (*1*) of section 54 of the said Code, in clause *fourthly*, for the word "or" the word "and" shall be substituted, and to the same sub-section the following clause shall be added, namely :—

"*ninthly*, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition."

Amendment of section 56, Code of Criminal Procedure, 1898.

11. In sub-section (*1*) of section 56 of the said Code, after the words "police-station" the words "or any police-officer making an investigation under Chappter XIV" shall be inserted, and to the same sub-section the following shall be added, namely :—

"The officer so required shall before making the arrest notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order."

Amendment of section 59, Code of Criminal Procedure, 1898.

12. For sub-section (*1*) of section 59 of the said Code the following sub-section shall be substituted, namely :—

"(*1*) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station."

Amendment of section 88, Code of Criminal Procedure, 1898.

13. (*1*) After sub-section (*6*) of section 88 of the said Code the following sub-sections shall be inserted, namely :—

"(*6A*) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part :

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(*6B*) Claims or objections under sub-section (*6A*) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section (*2*), in the Court of such Magistrate.

(*6C*) Every such claim or objection shall be inquired into by the Court in which it is preferred or made :

Provided that, if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.

(*6D*) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (*6A*) may, within a period of one year from the date of such order,

institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

(*6E*) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment."

(*2*) In sub-section (*7*) of the same section, after the words 'date of attachment" the words "and until any claim preferred or objection made under sub-section (*6A*) has been disposed of under that sub-section" shall be inserted.

Amendment of section 103, Code of Criminal Procedure, 1898

14. (*1*) To sub-section (*1*) of section 103 of the said Code, after the words "witness the search," the following shall be added, namely :—

"and may issue an order in writing to them or any of them so to do."

(*2*) After sub-section (*4*) of the same section the following sub-section shall be added, namely :—

"(*5*) Any person who without reasonable cause refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code." XLV of 1860.

Amendment of section 106, Code of Criminal Procedure, 1898.

15. In section 106 of the said Code,—

(*i*) in sub-section (*1*), for the word "rioting" the following words shall be substituted, namely:—"any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 143, section 149, section 153A or section 154 thereof, or of" and the words "or of assembling armed men or taking other unlawful measures with the evident intention of committing the same," shall be omitted; and XLV of 1860

(*ii*) in sub-section (*3*), after the words "Appellate Court" the words "including a Court hearing appeals under section, 407" shall be inserted.

Amendment of section 107, Code of Criminal Procedure, 1898.

16. (*1*) In sub-section (*1*) of section 107 of the said Code after the words "the Magistrate," where they first occur, the words "if in his opinion there is sufficient ground for proceeding" shall be inserted.

(*2*) In sub-section (*4*) of the same section, for the words "this section" the word, figure and brackets "sub-section (*3*)" shall be substituted, and for the words "until the completion of the inquiry hereinafter prescribed" the words "pending further action by himself under this Chapter" shall be substituted.

Amendment of section 108, Code of Criminal Procedure, 1898.

17. In section 108 of the said Code, after the words "in writing" the words "or in any other manner intentionally" shall be inserted; after the words "such Magistrate" the words "if in his opinion there is sufficient ground for proceeding" shall be inserted; for the words "or printed or published" the words "and edited, printed and published" shall be substituted; and after the figures "1867," the words "with reference to any matter contained in such publication" shall be inserted.

Amendment of section 110, Code of Criminal Procedure, 1898.

18. In section 110 of the said Code,—

(*i*) in clause (*a*), the word "or" where it first occurs, shall be omitted, and after the word "thief" the words "or forger," shall be inserted; and

(*ii*) for clause (*d*) the following clause shall be substituted, namely :—

"(*d*) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, or under section 489A, section 489B, section 489C or section 489D of that Code, or". XLV of 1860.

Amendment of section 117, Code of Criminal Procedure, 1898.

19. In section 117 of the said Code,-

(*i*) after sub-section (*2*) the following sub-section shall be inserted, namely :—

"(*3*) Pending the completion of the inquiry under sub-section (*1*), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that—

(*a*) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

(*b*) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112";

(*ii*) sub-section (*3*) shall be re-numbered (*4*), and after the words "habitual offender" in the said sub-section, the words "or is so desperate and dangerous as to render his being at large without security hazardous to the community" shall be inserted ; and

(*iii*) sub-section (*4*) shall be re-numbered (*5*).

Substitution of new section for section 122, Code of Criminal Procedure, 1898

20. For section 122 of the said Code the following section shall be substituted, namely :—

Power to reject sureties

"122. (*1*) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond :

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(*2*) Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(*3*) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (*1*), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him."

Amendment of section 123, Code of Criminal Procedure, 1898.

21. (*1*) After sub-section (*3*) of section 123 of the said Code the following sub-sections shall be inserted, namely :—

"(*3 A*) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (*2*), such reference shall also include the case of any other of such persons who has been

ordered to give security, and the provisions of sub-sections (*2*) and (*3*) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(*3B*) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (*2*) or sub-section (*3A*) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings."

(*2*) In sub-section (*6*) of the same section, for the word "may" the following words shall be substituted, namely :—

"shall, where the proceedings have been taken under section 108 or section 109, be simple and, where the proceedings have been taken under section 110."

Amendment of section 124, Code of Criminal Procedure, 1898.

22. In section 124 of the said Code,—

(*i*) in sub-section (*1*), the words "whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate," shall be omitted;

(*ii*) for sub-section (*3*) the following sub-section shall be substituted, namely :—

"(*3*) An order under sub-section (*1*) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired"; and

(*iii*) after sub-section (*3*) the following sub-sections shall be inserted, namely :—

"(*4*) The Local Government may prescribe the conditions upon which a conditional discharge may be made.

(*5*) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(*6*) When a conditional order of discharge has been cancelled under sub-section (*5*), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor."

Amendment of section 126, Code of Criminal Procedure, 1898.

23. Sub-section (*3*) of section 126 of the said Code shall be re-numbered section 126A, and in that section, as re-numbered, for the words "When such person appears or is brought

before the Magistrate, such Magistrate shall cancel the bond" the following shall be substituted, namely :—

"When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (*3*) of section 122 or under section 126, sub-section (*2*), appears or is brought before him, the Magistrate shall cancel the bond executed by such person."

Substitution of new section for section 133, Code of Criminal Procedure, 1898.

24. For section 133 of the said Code the following section shall be substituted, namely :—

Conditional order for removal of nuisance.

"133. (*1*) Whenever a District Magistrate, a Subdivisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation ; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed ; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure ; or

to remove or support such tree ; or

to alter the disposal of such substance ; or

to fence such tank, well or excavation, as the case may be ; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order ; or, if he objects so to do,

to appear before himself or some other Magistrate of the first and second class, at the time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(*2*) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A 'public place' includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes."

Amendment of section 135, Code of Criminal Procedure, 1898.

25. In section 135 of the said Code, in clause *(a)*, after the words "within the time" the words "and in the manner" shall be inserted.

Insertion of new section 139A in the Code of Criminal Procedure, 1898.

26. After section 139 of the said Code the following section shall be inserted, namely :—

Procedure where existence of public right is denied.

"139A. *(1)* Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court ; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section *(1)*, failed to deny the existence of a public right of the nature therein referred to, or who having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138."

Amendment of section 144, Code of Criminal Procedure, 1898

27. In section 144 of the said Code,—

(i) in sub-section *(1)*, after the words "or of any other Magistrate" the words and brackets "(not being a Magistrate of the third class)" shall be inserted, and after the words "under this section" the words "there is sufficient ground for proceeding under this section and" shall be inserted ;

(ii) in sub-section *(4)*, after the word "may" the words "either on his own motion or on the application of any person aggrieved" shall be inserted ; and

(iii) in sub-section *(5)* shall be re-numbered as sub-section *(6)*, and the following shall be inserted as sub-section *(5)*, namely :—

"*(5)* where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order ; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing."

Amendment of section 145, Code of Criminal Procedure, 1898

28. In section 145 of the said Code,—

(i) in sub-section *(4)*, for the words "receive the evidence" the words "receive all such evidence as may be" shall be substituted ;

(ii) in sub-section *(6)*, after the word "was" the words "or should under the first proviso to sub-section *(4)* be treated as being" shall be inserted, and the following shall be added after the words "such eviction," namely :—

"and when he proceeds under the first proviso to sub-section *(4)*, may restore to possession the party forcibly and wrongfully dispossessed" ;

(iii) for sub-section *(7)* the following sub-section shall be substituted, namely :—

"*(7)* When any party to any such proceeding dies the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as

to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto ; and

(*iv*) after sub-section (*7*) the following sub-sections shall be added, namely :—

" (*8*) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(*9*) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(*10*) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107."

Amendment of section 146, Code of Criminal Procedure, 1898.

29. (*1*) To sub-section (*1*) of section 146 of the said Code the following proviso shall be added, namely :—

" Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute."

(*2*) In sub-section (*2*) of the same section after the words " thinks fit " the words " and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court " shall be inserted, and to the same sub-section the following proviso shall be added, namely :—

" Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged."

Substitution of new section for section 147, Code of Criminal Procedure, 1898.

30. For section 147 of the said Code the following section shall be substituted, namely :—

Disputes concerning rights of use of immoveable property, etc.

'147. (*1*) Whenever any District Magistrate, Subdivisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (*2*) (whether such right be claimed as an easement or otherwise), within the local limits of his jurisdiction, he make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate, and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(*2*) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where the right is exerciseable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exerciseable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(*3*) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction."

Amendment of section 148, Code of Criminal Procedure, 1898.

31. In sub-section (3) of section 148 of the said Code, the words "for witnesses, or pleaders' fees, or both," shall be omitted, and for the words "All costs so directed to be paid may be recovered as if they were fines" the words "Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable" shall be substituted.

Amendment of section 157, Code of Criminal Procedure, 1898.

32. In section 157 of the said Code,-

(i) in sub-section (1), after the words "one of his subordinate officers" the words "not being below such rank as the Local Government may, by general or special order, prescribe in this behalf" shall be inserted, and for the words "and to take such measures as may be necessary," the words "and, if necessary, to take measures" shall be substituted; and

(ii) to sub-section (2), after the words "that sub-section" the words "and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated" shall be added.

Amendment of section 161, Code of Criminal Procedure, 1898.

33. In sub-section (1) of section 161 of the said Code, after the word "Chapter" the words "or any police-officer not below such rank as the Local Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer" shall be inserted.

Amendment of section 162, Code of Criminal Procedure, 1898.

34. For sub-section (1) of section 162 of the said Code the following sub-section shall be substituted, namely:—

Statements to police not to be signed; use of such statements in evidence.

"(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination: I of 1872.

"Provided, further, that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused."

Amendment of section 164, Code of Criminal Procedure, 1898.

35. In section 164 of the said Code,—

(i) in sub-section (1), for the words "Every Magistrate not being a police-officer may" the words "Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Local Government may, if he is not a police-officer" shall be substituted; and

(*ii*) in sub-section (*3*)—

(*a*) for the words "No Magistrate" the following words shall be substituted, namely :—

"A Magistrate shall before recording any such confession explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate" ; and

(*b*) for the words "I believe" the following words shall be substituted, namely :—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe".

Amendment of section 165, Code of Criminal Procedure, 1898.

36. In section 165 of the said Code,—

(*i*) for sub-sections (*1*) and (*2*) the following sub-sections shall be substituted, namely :—

"(*1*) Whenever an officer in charge of a police-station, or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(*2*) A police-officer proceeding under sub-section (*1*) shall, if practicable, conduct the search in person";

(*ii*) in sub-section (*3*), after the words "he may" the words "after recording in writing his reasons for so doing" shall be inserted, and for the words "specifying the document or thing for which search is to be made and the place to be searched" the words "specifying the place to be searched and, so far as possible, the thing for which search is to be made" shall be substituted ;

(*iii*) in sub-section (*4*), after the words "search warrants" the words "and the general provisions as to searches contained in section 102 and section 103" shall be inserted ; and

(*iv*) after sub-section (*4*) the following sub-section shall be added, namely :—

"(*5*) Copies of any record made under sub-section (*1*) or sub-section (*3*) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost."

Amendment of section 166, Code of Criminal Procedure, 1898.

37. (*1*) In sub-section (*1*) of section 166 of the said Code, after the words "An officer in charge of a police-station" the words "or a police officer not being below the rank of sub-inspector making an investigation" shall be inserted.

(*2*) After sub-section (*2*) of the same section the following sub-sections shall be added, namely :—

"(*3*) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (*1*) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in

charge of a police-station or a police officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of anosher police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost."

Amendment of section 167, Code of Criminal Procedure, 1898.

38. In section 167 of the said Code,—

(i) in sub-section (1)—

(a) for the words "it appears that any" the words "any person is arrested and detained in costody, and it appears that the." shall be substituted, and the words "under this Chapter" shall be omitted;

(b) after the words "officer in charge of the police-station" the words "or the police-officer making the investigation if he is not below the rank of sub inspector" shall be inserted; and

(c) the words and brackets "(if any)" shall be omitted; and

(ii) to sub-section (2) after the words "such jurisdiction" the following proviso shall be added, namely :—

"Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Local Government shall authorise detention in the custody of the police."

Amendment of section 169, Code of Criminal Procedure, 1898.

39. In section 169 of the said Code, after the words "officer in charge of the police-station" the words "or to the police-officer making the investigation" shall be inserted.

Amendment of section 173, Code of Criminal Procedure, 1898.

40. (1) For sub-section (1) of section 173 of the said Code, the following sub-section shall be substituted, namely :—

"(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall—

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given."

(2) After sub-section (3) of the same section the following sub-section shall be inserted, namely :—

"(4) A copy of any report fowarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial :

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free cost."

Amendment of section 174, Code of Criminal Procedure, 1898.

41. In sub-section (*5*) of section 174 of the said Code, for the words "or Subdivisional Magistrate," the words "Subdivisional Magistrate or Magistrate of of the first class," shall be substituted.

Amendment of section 181, Code of Criminal Procedure, 1898.

42. For sub-section (*3*) of section 181 of the said Code the following sub-section shall be substituted, namely :—

Theft.

"(*3*) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed bythe thief or by any person who received or retained the same knowing or having reason to believe it to be stolen."

Substitution of new section for section 185, Code of Criminal Procedure, 1898.

43. For section 185 of the said Code the following section shall be substituted, namely :—

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

"185. (*1*) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing, all other such proceedings shall be discontinued."

Amendment of section 188, Code of Criminal Procedure, 1898.

44. In the first proviso to section 188 of the said Code after the words "Provided that" the words "Notwithstanding anything in any of the preceding sections of this Chapter" shall be inserted.

Amendment of section 190, Code of Criminal Procedure, 1898

45. For clause (*b*) of sub-section (*1*) of section 190 of the said Code the following clause shall be substituted, namely :—

"(*b*) upon a report in writing of such facts made by any police-officer;"

Amendment of section 193, Code of Criminal Procedure, 1898.

46. In sub-section (*2*) of section 193 of the said Code, the words "in the case of Assistant Sessions Judges" shall be omitted.

Amendment of section 195, Code of Criminal Procedure, 1898.

47. (*1*) For sub-section (*1*) of section 195 of the said Code the following sub-section shall be substituted, namely :—

"(*1*) No Court shall take cognizance—

Prosecution for contempt of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 of the Indian Penal Code except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate ; XLV of 1860

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate ; or

Prosecution for certain offences relating to documents given in evidence.

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate."

(2) In sub-section (2) of the same section, for the word "means" the word "includes" shall be substituted.

(3) Sub-sections (4), (5) and (6) of the same section shall be omitted.

(4) Sub-sections (7) and (8) of the same section shall be re-numbered (3) and (4), respectively, and for sub-section (3), as re-numbered, the following sub-section shall be substituted, namely :—

"(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

(5) After sub-section (4) of the same section as re-numbered the following sub-section shall be inserted, namely :—

"(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint."

Amendment of section 196A, Code of Criminal Procedure, 1898.

48. In the proviso to section 196A of the said Code, for the figure and brackets "(3)" the figure and brackets "(4)" shall be substituted.

Insertion of new section 196B in the Code of Criminal Procedure, 1898.

49. After section 196A of the said Code the following section shall be inserted, namely :—

Preliminary inquiry in certain cases.

"196B. In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in section 155, sub-section (3)."

Amendment of section 197, Code of Criminal Procedure, 1898.

50. In section 197 of the said Code,-

(i) for sub-section (1) the following sub-section shall be substituted, namely :—

"(1) When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government ;" and XLV of 1860.

(*ii*) in sub-section (*2*), after the the word "Judge" the word "Magistrate" shall be inserted.

Amendment of section 198, Code of Criminal Procedure, 1898.

51. To section 198 of the said Code, the following proviso shall be added, namely :—

"Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint some other person may, with the leave of the Court, make a complaint on his or her behalf."

Amendment of section 199, Code of Criminal Procedure, 1898.

52. In section 199 of the said Code, after the word "absence" the words "made with the leave of the Court" shall be inserted, and, to the same section, the following proviso shall be added, namely :—

"Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf."

Insertion of new section 199A in the Code of Criminal Procedure, 1898.

53. In Chapter XV of the said Court, after section 199, the following section shall be inserted, namely :—

Objection by lawful guardian to complaint by person other than person aggrieved.

"199A. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof."

Amendment of section 200, Code of Criminal Procedure, 1898.

54. In section 200 of the said Code, the words and figures "Subject to the provisions of section 476" shall be omitted, and after proviso (*a*) the following proviso shall be inserted, namely :—

"(*aa*) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complaint in any case in which the complainant has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties."

Amendment of section 202, Code of Criminal Procedure, 1898.

55. In section 202 of the said Code,-

(*i*) for sub-sections (*1*) and (*2*) the following sub-sections shall be substituted, namely :—

Postponement for issue of process.

"(*1*) Any Magistrate, on receipt of a compiaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :

Provided that no such direction shall be made—

(*a*) unless the complainant has been examined on oath under the provisions of section 200, or

(*b*) where the complaint has been made by a Court under the provisions of this Code.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant" ; and

(ii) after sub-section (2) the following sub-section shall be added, namely :—

"(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath."

Amendment of section 203, Code of Criminal Procedure, 1898.

56. In section 203 of the said Code, for the words "after examining the complainant and considering the result of the investigation (if any) made under section 202" the words "after considering the statement on oath (if any) of the complainant and the result of any investigation or inquiry under section 202" shall be substituted.

Amendment of section 206, Code of Criminal Procedure, 1898.

57. In sub-section (1) of section 206 of the said Code, after the words "or any Magistrate" the words and brackets "(not being a Magistrate of the third class)" shall be inserted.

Amendment of section 210, Code of Criminal Procedure, 1898.

58. In sub-section (2) of section 210 of the said Code, for the words "the charge" the words "such charge" shall be substituted.

Amendment of section 215, Code of Criminal Procedure, 1898.

59. In section 215 of the said Code, the words and figures "or by a Court of Session under section 477" shall be omitted.

Amendment of section 219, Code of Criminal Procedure, 1898.

60. (1) In sub-section (1) of section 219 of the said Code, for the words "The Magistrate" the words "The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206" shall be substituted.

(2) In sub-section (2) of the same section, for the words "if the accused so require, be given to him free of cost" the words "be given to the accused free of cost" shall be substituted.

Amendment of section 221, Code of Criminal Procedure, 1898.

61. In sub-section (7) of section 221 of the said Code,—

(i) for the words "has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award," the following shall be substituted, namely :—

"having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence," and

(ii) for the words "is omitted" the words "has been omitted" shall be substituted.

Amendment of section 234, Code of Criminal Procedure, 1898.

62. In section 234 of the said Code,—

(i) in sub-section (1), after the words "such offences" the words "whether in respect of the same person or not" shall be inserted ; and

(ii) to sub-section (2) the following proviso shall be added, namely :—

"Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, XLV of 1860.

or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

Amendment of section 237, Code of Criminal Procedure, 1898.

63. Sub-section (*2*) of section 237 of the said Code shall be omitted.

Amendment of section 238, Code of Criminal Procedure, 1898.

64. After sub-section (*2*) of section 238 of the said Code the following sub-section shall be inserted, namely :—

"(*2A*) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged."

Substitution of new section for section 239, Code of Criminal Procedure, 1898

65. For section 239 of the said Code the following section shall be substituted, namely :—

What persons may be charged jointly.

"239. The follwing persons may be charged and tried together, namely :—

(*a*) persons accused of the same offence committed in the course of the same transaction ;

(*b*) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;

(*c*) persons accused of more than one offence of the same kind within the meaning of section 234 committed by them jointly within the period of twelve months ;

(*d*) persons accused of different offences committed in the course of the same transaction ;

(*e*) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence ;

(*f*) persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence ; XLV of 1860.

(*g*) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ; XLV of 1860.

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges."

Amendment of section 243, Code of Criminal Procedure, 1898.

66. In section 243 of the said Code, for the words "shall convict" the words "may convict" shall be substituted.

Amendment of section 244, Code of Criminal Procedure, 1898.

67. In section 244 of the said Code,—

(*i*) in sub-section (*1*), before the words "If the accused" the words "If the Magistrate does not convict the accused under the preceding section or" shall be inserted, and to the same sub-section, the following proviso shall be added, namely :—

"Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court"; and

(*ii*) in sub-section (*2*), for the words "process to compel the attendance of any witness or the production of" the words

"a summons to any witness directing him to attend or to produce" shall be substituted.

Amendment of section 245, Code of Criminal Procedure, 1898.

68. For sub-section (*2*) of section 245 of the said Code the following shall be substituted, namely:—

"(*2*) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law."

Amendment of section 250, Code of Criminal Procedure, 1898.

69. In section 250 of the said Code,—

(*i*) for sub-sections (*1*) and (*2*) the following sub-sections shall be substituted, namely :—

False, frivolous or vexatious accusations.

"(*1*) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(*2*) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(*2A*) The Magistrate may, by the order directing payment of the compensation under sub-section (*2*), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(*2B*) When any person is imprisoned under sub-section (*2A*), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply. XLV of 1860.

(*2C*) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter";

(*ii*) in sub-section (*3*), for the word and figure "sub-section (*1*)" the word and figure "sub-section (*2*)" shall be substituted, and for he words "to an accused person" the following shall be substituted, namely :—

"or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees."

(*iii*) to sub-section (*4*) after the words "appeal has been decided" the following shall be added, namely :—

"and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order"; and

(*iv*) sub-section (*5*) shall be omitted.

Amendment of section 252, Code of Criminal Procedure, 1898.

70. To sub-section (*1*) of section 252 of the said Code the following proviso shall be added, namely :—

"Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court."

Insertion of new section 255A in the Code of Criminal Procedure, 1898.

71. After section 255 of the said Code the following section shall be inserted, namely :—

Procedure in case of previous convictions.

"255A. In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (*2*), or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon."

Amendment of section 256, Code of Criminal Procedure, 1898.

72. In sub section (*1*) of section 256 of the said Code, after the words "to state" the words "at the commencement of the next hearing of the case or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith" shall be inserted.

Amendment of section 258, Code of Criminal Procedure, 1898.

73. For sub-section (*2*) of section 258 of the said Code the following sub-section shall be substituted, namely :—

"(*2*) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law."

Amendment of section 259, Code of Criminal Procedure, 1898.

74. In section 259 of the said Code, after the words "and the offence may be lawfully compounded" the words "or is not a cognizable offence" shall be inserted.

Amendment of section 261, Code of Criminal Procedure, 1898.

75. In section 261 of the said Code,—

(*i*) in clause (*a*), for the word and figures "and 447" the figures and word "447 and 504" shall be substituted ; and

(*ii*) to clause (*b*), after the words "one month," the words "with or without fine" shall be added.

Amendment of section 266, Code of Criminal Procedure, 1898.

76. To section 266 of the said Code, after the words "for the purposes of this Chapter," the words "and of Chapter XVIII" shall be added.

Amendment of section 276, Code of Criminal Procedure, 1898.

77. In the third proviso to section 276 of the said Code, for the words "in the presidency-towns" the words "in a trial before any High Court in the town which is the usual place of sitting of such High Court" shall be substituted.

Amendment of section 288, Code of Criminal Procedure, 1898.

78. In section 288 of the said Code,—

(*i*) for the words "duly taken in the presence of the accused before the committing Magistrate" the words "duly recorded in the presence of the accused under Chapter XVIII" shall be substituted ; and

(*ii*) after the words "as evidence in the case," the words "for all purposes subject to the provisions of the Indian Evidence Act, 1872," shall be added. I of 1872.

Substitution of new section for section 292, Code of Criminal Procedure, 1898.

79. For section 292 of the said Code the following section shall be substituted, namely :—

Prosecutor's right of reply.

"292. The prosecutor shall be entitled to reply—

(*a*) if the accused or any of the accused adduces any oral evidence ; or

(b) with the permission of the Court, on a point of law; or

(c) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that, in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced."

Amendment of section 306, Code of Criminal Procedure, 1898.

80. In sub-section (2) of section 306 of the said Code, after the word "shall" where it occurs for the second time, the words "unless he proceeds in accordance with the provisions of section 562" shall be inserted.

Amendment of section 307, Code of Criminal Procedure, 1898.

81. In section 307 of the said Code,—

(1) in sub-section (1)—

(i) for the words "the accused" the words "any accused person" shall be substituted;

(ii) after the words "to submit the case" the words "in respect of such accused person" shall be inserted; and

(iii) after the words "considers to have been committed," the following shall be added, namely:—

"and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction," and

(2) in sub-sections (2) and (3), for the words "the accused" wherever they occur, the words "such accused" shall be substituted.

Amendment of section 309, Code of Criminal Procedure, 1898.

82. In section 309 of the said Code,—

(i) in sub-section (1) after the word "orally" the following shall be inserted, namely:—

"on all the charges on which the accused has been tried," and after the words "such opinion" the following shall be inserted, namely:—

"and for that purpose may ask the assessors such questions as are necessary to ascertain what their opinions are. All such questions and the answers to them shall be recorded"; and

(ii) in sub-section (3), after the word "shall" the words "unless he proceeds in accordance with the provisions of section 562" shall be inserted.

Substitution of new section for section 310, Code of Criminal Procedure, 1898.

83. For section 310 of the said Code the following section shall be substituted, namely:—

Procedure in case of previous conviction.

"310. In the case of a trial by a jury or with the aid of assessors when the accused is charged with an offence and further charged that he is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for such subsequent offence, the procedure prescribed by the foregoing provisions of this Chapter shall be modified as follows, namely:—

(a) Such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution, or any evidence adduced thereon unless and until,

(i) he has been convicted of the subsequent offence, or

(ii) the jury have delivered their verdict, or the opinions of the assessors have been recorded on the charge of the subsequent offence.

(*b*) In the case of a trial held with the aid of assessors, the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction."

Amendment of section 315, Code of Criminal Procedure, 1898.

84. In sub-section (*1*) of section 315 of the said Code, for the words "in each presidency-town" the words "in the town which is the usual place of sitting of each High Court" shall be substituted, and for the words "at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries," the words "as many of those who are liable to serve on special or common juries respectively as the Clerk of the Crown considers necessary" shall be substituted.

Amendment of section 316, Code of Criminal Procedure, 1898.

85. In section 316 of the said Code, for the words "presidency-towns" the words "town which is the usual place of sitting of such High Court" shall be substituted.

Amendment of section 337, Code of Criminal Procedure, 1898.

86. In section 337 of the said Code,—

(*i*) for sub-section (*1*) the following sub-sections shall be substituted, namely :—

"(*1*) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Indian Penal Code with XLV of 1860
imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, XLV of 1860
namely, sections 216A, 369, 401, 435 and 477A, the District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly, or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

(*1A*) Every Magistrate who tenders a pardon under sub-section (*1*) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record :

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost";

(*ii*) in sub-section (*2*), for the words "the case" the words "the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any," shall be substituted ;

(*iii*) after sub-section (*2*) the following sub-section shall be inserted, namely :—

"(*2A*) In every case where a person has accepted a tender of pardon and has been examined under sub-section (*2*), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be";

(*iv*) in sub-section (*3*), for the words "if not on bail" the words "unless he is already on bail" shall be substituted, and the words "by the Court of Session or High Court, as the case may be," shall be omitted ; and

(*v*) sub-section (*4*) shall be omitted.

Amendment of section 339, Code of Criminal Procedure, 1898.

87. (*1*) In sub-section (*1*) of section 339 of the said Code, after the words and figures "section 338, and" the words "the Public Prosecutor certifies that in his opinion" shall be inserted; for the words "he may be" the words "such person may be" shall be substituted; and to the said sub-section, the following proviso shall be added, namely :—

"Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with."

(*2*) In sub-section (*2*) of the same section, for the words "when the pardon has been forfeited under this section" the words "at such trial" shall be substituted.

Insertion of new section 339A in the Code of Criminal Procedure, 1898.

"**88.** After section 339 of the said Code the following section shall be inserted, namely :—

Procedure in trial of person under section 339.

"339A. (*1*) The Court trying under section 339 a person who has accepted a tender of pardon shall—

(*a*) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (*1*), and

(*b*) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(*2*) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal."

Substitution of new section for section 340, Code of Criminal Procedure, 1898.

89. For section 340 of the said Code the following section shall be substituted, namely :—

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

"340. (*1*) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(*2*) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings."

Amendment of section 345, Code of Criminal procedure 1898.

90. In section 345 of the said Code,—

(*i*) in sub-section (*1*), for the word "described" the word "specified" shall be substituted, and to the table in that sub-section, after the entry relating to criminal intimidation, the following entry shall be added, namely :—

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(*ii*) for sub-section (*2*) the following sub-section shall be substituted, namely :—

"(*2*) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be XLV of 1860.

compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.		The person to whom hurt is caused.
Voluntarily causing grievous hurt	325	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.		The person confined.
Wrongly confining a person in secret	346	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property	403	The owner of the property misappropriated.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto.
Cheating by personation	419	Ditto
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.

(*iii*) in sub-section (*4*) for the words "a minor" the words "under the age of eighteen years or is" shall be substituted, and after the word "may" the words "with the permission of the Court" shall be inserted ;

(*iv*) After sub-section (*5*) the following sub-section shall be inserted, namely :—

"(*5A*) A High Court acting in the exercise of its powers of revision under section 439 may allow any person to compound any offence which he is competent to compound under this section" ; and

(*v*) to sub-section (*6*), after the word "accused" the words "with whom the offence has been compounded" shall be added.

Amendment of section 347, Code of Criminal Procedure, 1898.

91. In sub-section (*1*) of section 347 of the said Code, the words "stop further proceedings and" shall be omitted.

Amendment of section 348, Code of Criminal Procedure, 1898.

92. (*1*) Section 348 of the said Code shall be re-numbered 348 (*1*), and in the said section, as re-numbered, after the word "shall" the words "if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused" shall be inserted, and for the words "before whom the proceedings are pending" the words "is competent to try the case and" shall be substituted.

(*2*) In the proviso to the same section, as re-numbered, for the words "the District Magistrate" the words "any Magistrate in the district" shall be substituted.

(*3*) To the same section, as re-numbered, the following sub-section shall be added, namely :—

"(*2*) When any person is committed to the Court of Session or High Court under sub-section (*1*), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under section 209."

Amendment of section 349, Code of Criminal Procedure, 1898.

93. After sub-section (*1*) of section 349 the following sub-section shall be inserted, namely :

"(*1A*) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (*1*) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Subdivisional Magistrate."

Amendment of section 350, Code of Criminal Procedure, 1898.

94. To sub-section (*2*) of section 350 of the said Code, after the figures "346", the words "or in which proceedings have been submitted to a superior Magistrate under section 349" shall be added, and, after the same sub-section the following sub-section shall be added, namely :—

"(*3*) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of sub-section."(*1*)

Insertion of new section 350A in the Code of Criminal Procedure, 1898.

95. After section 350 of the said Code the following section shall be inserted, namely :—

Changes in constitution of Benches

"350A. No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16 and the Magistrates constituting the same have been present on the Bench throughout the proceedings.

Amendment of section 356, Code of Criminal Procedure.

96. In section 356 of the said Code, after sub-section (*2*), the following sub-section shall be inserted, namely :—

"(*2A*) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record."

Amendment of section 362, Code of Criminal Procedure, 1898.

97. In section 362 of the said Code,—

(*i*) in sub-section (*1*), for the words "in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisenment for a term exceeding six months, he" the words "tried by a Presidency Magistrate in which an appeal lies, such Magistrate" shall be substituted ;

(*ia*) after such sub-section (*2*) the following sub-section shall be inserted:—

"(*2A*) In every case referred to in sub-section (*1*), the Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record."

(*ii*) to sub-section (*3*), after the word "sentence" the words "unless they are sentences of imprisonment ordered to run concurrently" shall be added , and

(*iii*) after sub-section (*3*) the following sub-section shall be added, namely :—

"(*4*) In cases other than those specified in sub-section (*1*), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge."

Amendment of section 364, Code of Criminal Procedure, 1898.

98. In sub-section (*4*) of section 364 of the said Code, after the figures "263" the words and figures "or section 362, sub-section (*2A*)," shall be inserted.

Amendment of section 365, Code of Criminal Procedure, 1898.

99. In section 365 of the said Code, for the word "may" the word "shall" shall be substituted, and for the words "and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed" the words "and the evidence shall be taken down in accordance with such rule" shall be substituted.

Amendment of section 367, Code of Criminal Procedure, 1898.

100. In section 367 of the said Code,—

(*i*) in sub-section (*1*), after the words "presiding officer of the Court" the words "or from the dictation of such presiding officer" shall be inserted;

(*ii*) to the same sub-section the following words shall be added, namely :—

"and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him"; and

(*iii*) after sub-section (*5*) the following sub-section shall be added, namely :—

(*6*) For the purposes of this section, an order under section 118 or section 123, sub-section (*3*), shall be deemed to be a judgment."

Amendment of section 369, Code of Criminal Procedure, 1898.

101. In section 369 of the said Code, for the words "No Court other than a High Court" the words "Save as otherwise provided by this Code or by any other law for the time being in force or in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court, no Court" shall be substituted; and the words and figures "as provided in sections 395 and 484 or" shall be omitted.

Substitution of new section for section 386, Code of Criminal Procedure, 1898.

102. For section 386 of the said Code the following section shall be substituted, namely :—

Warrant for levy of fine.

"386. (*1*) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(*a*) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(*b*) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(*2*) The Local Government may make rules regulating the manner in which warrants under sub-section (*1*), clause (*a*) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(*3*) Where the Courts issue a warrant to the Collector under sub-section (*1*), clause (*b*), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly : V of 1908.

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

Amendment of section 387, Code of Criminal Procedure, 1898.

103. In section 387 of the said Code, for the words "Such warrant" the words "A warrant issued under section 386, sub-section (*1*), clause (*a*), by any Court" shall be substituted, and for the word "distress" the word "attachment" shall be substituted.

Amendment of section 388, Code of Criminal Procedure, 1898.

104. In sub-section (*1*) of section 388 of the said Code,—

(*i*) for the words "and the Court issues a warrant under section 386, it" the words "the Court" shall be substituted; and

(*ii*) for the words "on the day appointed for the return to such warrant, such day not being" the words "on a date not" shall be substituted.

Amendment of section 395, Code of Criminal Procedure, 1898.

105. In section 395 of the said Code,—

(*i*) in sub-section (*1*), after the words "twelve months" the words "or to a fine not exceeding five hundred rupees" shall be inserted; and

(*ii*) in sub-section (*2*), after the words "for a term" the words "or a fine of an amount" shall be inserted.

Amendment of section 397, Code of Criminal Procedure, 1898.

106. In section 397 of the said Code,—

(*i*) after the words "to which he has been previously sentenced" the words "unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence" shall be inserted; and

(*ii*) after the proviso the following further proviso shall be added, namely:—

"Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is whilst undergoing such sentence sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately."

Amendment of section 401, Code of Criminal Procedure, 1898.

107. In section 401 of the said Code,—

(*i*) to sub-section (*2*), after the words "together with his reasons for such opinion" the following words shall be added, namely:—

"and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists";

(*ii*) after sub-section (*4*) the following sub-section shall be inserted, namely:—

"(*4A*) the provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code, or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property;"

(*iii*) in sub-section (*5*), for the words "Her Majesty" the words "His Majesty or of the Governor General when such right is delegated to him" shall be substituted; and

(*iv*) after sub-section (*5*) the following sub-section shall be inserted, namely:—

"(*5A*) Where a conditional pardon is granted by His Majesty or, in virtue of any powers delegated to him, by the Governor General, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly".

Amendment of section 402, Code of Criminal Procedure, 1898

108. Section 402 of the said Code shall be re-numbered section 402 (*1*), and to the said section, as re-numbered, the following sub-section shall be added, namely :—

"(*2*) Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code." XLV of 1860.

Amendment of section 406, Code of Criminal Procedure, 1898.

109. For section 406 of the said Code the following section shall be substituted, namely :—

Appeal from order requiring security for keeping the peace or for good behaviour.

"406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

(*a*) if made by a Presidency Magistrate, to the High Court ;

(*b*) if made by any other Magistrate, to the Court of Session :

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session :

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (*2*) or sub-section (*3A*) of section 123."

Insertion of new section 406A in the Code of Criminal Procedure, 1898.

110. After section 406 of the said Code the following section shall be inserted, namely :—

Appeal from order refusing to accept or rejecting a surety.

"406A. Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

(*a*) if made by a Presidency Magistrate, to the High Court ;

(*b*) if made by the District Magistrate, to the Court of Session ; or

(*c*) if made by a Magistrate other than the District Magistrate, to the District Magistrate."

Amendment of section 407, Code of Criminal Procedure, 1898.

111. In sub-section (*1*) of section 407 of the said Code after the figures "349," the words and figures "or in respect of whom an order has been made or a sentence has been passed under section 380" shall be inserted.

Amendment of section 408, Code of Criminal Procedure, 1898.

112. In section 408 of the said Code,—

(*i*) after the figures "349" the words and figures "or in respect of whom an order has been made or a sentence has been passed under section 380" shall be inserted ; and

(*ii*) in clause (*b*) of the proviso, after the word "appeal" the following words shall be inserted, namely :—

"of all or any of the accused convicted at such trial."

Amendment of section 409, Code of Criminal Procedure, 1898.

113. To section 409 of the said Code the following proviso shall be added, namely :—

"Provided that an Additional Sessions Judge shall hear only such appeals as the Local Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.

Insertion of new section 415A in the Code of Criminal Procedure, 1898.

114. After section 415 of the said Code the following section shall be inserted, namely :—

Special right of appeal in certain cases.

"415A. Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal."

Amendment of section 418, Code of Criminal Procedure, 1898.

115. Section 418 of the said Code shall be re-numbered section 418 (*1*), and, to the said section, as re-numbered, the following sub-section shall be added, namely:—

"(*2*) Notwithstanding anything contained in sub section (*1*) or in section 423, sub-section (*2*), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law."

Amendment of section 435, Code of Criminal Procedure, 1898.

116. In section 435 of the said Code,—

(*i*) to sub-section (*1*), after the words "proceedings of such inferior Court," the following words shall be added, namely :—

"and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record";

(*ii*) after the same sub-section the following Explanation shall be added, namely :—

"*Explanation.*—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437 ;" and

(*iii*) sub-section (*3*) shall be omitted.

Transposition of sections 436 and 437 and amendment of section 437, Code of Criminal Procedure, 1898.

117. Sections 436 and 437 of the said Code shall be re-numbered 437 and 436, respectively, and, in the latter section, as renumbered,—

(*a*) for the words "accused person" the words "person accused of an offence" shall be substituted ; and

(*b*) after the words "discharged" the following proviso shall be added, namely :—

"Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of shewing cause why such direction should not be made."

Amendment of section 438, Code of Criminal Procedure, 1898.

118. To sub-section (*2*) of section 438 of the said Code, for the words "by the Sessions Judge" the words "by or under any general or special order of the Sessions Judge" shall be substituted.

Amendment of section 439, Code of Criminal, Procedure, 1898

119. In sub-section (*1*) of section 439 of the said Code, the figures "195" shall be omitted, and after sub-section (*5*) of the same section the following sub-section shall be added, namely :—

"(*6*) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (*2*) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction."

Amendment of section 464, Code of Criminal Procedure, 1898.

120. In section 464 of the said Code,—

(*i*) after sub-section (*1*) the following sub-section shall be inserted, namely :—

"(*1A*) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466"; and

(*ii*) in sub-section (*2*), after the word "he" the words "shall record a finding to that effect and" shall be inserted.

Amendment of section 465, Code of Criminal Procedure, 1898.

121. In sub-section (*1*) of section 465 of the said Code, for the words "and if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed" the following words shall be substituted, namely :

"and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged."

Amendment of section 466, Code of Criminal Procedure, 1898.

122. In section 466 of the said Code,—

(*i*) in sub-section (*1*), for the words "if the case is one in which bail may be taken," the words "whether the case is one in which bail may be taken or not" shall be substituted ; and

(*ii*) for sub-section (*2*) the following sub-section shall be substituted, namely :—

Custody of lunatic.

"(*2*) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Local Government :

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912." IV of 1912.

Amendment of section 468, Code of Criminal Procedure, 1898.

123. In sub-section (*2*) of section 468 of the said Code, the word "person" shall be omitted, and the following words shall be added after the words "as the case may be," namely :—

"and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466."

Amendment of section 471, Code of Criminal Procedure, 1898.

124. (*1*) In sub-section (*1*) of section 471 of the said Code,—

(*i*) for the words "such judgment" the words "the finding" shall be substituted ;

(*ii*) for the word "kept" the word "detained" shall be substituted ; and

(*iii*) after the words "Court thinks fit," the words "and shall report the action taken to the Local Government" shall be inserted.

(*2*) After sub-section (*1*) of the same section the following proviso shall be inserted, namely :—

"Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912." IV of 1912

(*3*) Sub-section (*4*) of the same section shall be renumbered (*3*).

Amendment of section 473, Code of Criminal Procedure, 1898.

125. In section 473 of the said Code, for the word "confined" the word "detained" shall be substituted, and for the words "such Inspector-General or visitors" the words "in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them" shall be substituted.

Amendment of section 474, Code of Criminal Procedure, 1898.

126. In section 474 of the said Code, for the word "confined" the word "detained" shall be substituted, and for the words "discharged" (wherever it occurs) and "discharge" the words "released" and "release", respectively, shall be substituted.

Substitution of new section for section 475, Code of Criminal Procedure, 1898.

127. For section 475 of the said Code the following section shall be substituted, namely :—

Delivery of lunatic to care of relative of friend.

"475. (*1*) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Local Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such Local Government that the person delivered shall—

(*a*) be properly taken care of and prevented from doing injury to himself or to any other person, and

(*b*) be produced for the inspection of such officer, and at such times and places, as the Local Government may direct, and

(*c*) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

(*2*) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (*1*), clause (*b*), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receiveable as evidence."

Substitution of new sections for section 476, Code of Criminal Procedure, 1898.

128. For section 476 of the said Code the following sections shall be substituted, namely :—

Procedure in cases mentioned in section 195.

"476. (*1*) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (*1*), clause (*b*) or clause (*c*), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

For the purposes of this sub-section a Chief Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(*2*) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage ajourn the hearing of the case until such appeal is decided.

Superior Court may complain where subordinate Court has omitted to do so.

476A. The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a compliant under section 476 in respect of such offence nor rejected an application for the making of such complaint; and, where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.

Appeals.

476B. Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make complaint which the subordinate Court might have made under section 476, and if it makes such complaint the provisions of that section shall apply accordingly."

Repeal of section 477, Code of Criminal Procedure, 1898.

129. Section 477 of the said Code shall be omitted.

Amendment of section 487, Code of Criminal Procedure, 1898

130. In section 487 of the said Code the figures "477" shall be omitted.

Amendment of section 488, Code of Criminal Procedure, 1898.

131. In section 488 of the said Code,—

(i) in sub-section (1), for the word "fifty" the words "one hundred" shall be substituted;

(ii) in sub-section (3), for the words "wilfully neglects" the words "fails without sufficient cause" shall be substituted;

(iii) to the same sub-section the following proviso shall be added, namely:—

"Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due";

(iv) sub-section (7) shall be omitted; and

(v) sub-sections (8) and (9) shall be re-numbered (7) and (8), respectively, and, in the last-named sub-section, for the words "The accused may be proceeded against" the words "Proceedings under this section may be taken against any person" shall be substituted.

Amendment of section 489, Code of Criminal Procedure, 1898.

132. (1) Section 489 of the said Code shall be re-numbered as sub-section (1) of section 489 and, in that sub-section, as re-numbered, for the word "fifty" the words "one hundred" shall be substituted.

(2) To the same section the following sub-section shall be added, namely:—

"(2) Where it appears to the Magistrate that in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly."

Amendment of section 492, Code of Criminal Procedure Code, 1898.

133. (*1*) In sub-section (*2*) of section 492 of the said Code, the words "In any case committed for trial to the Court of Session" shall be omitted, and for the words "such case" the words "any case" shall be substituted.

(*2*) In the same sub-section, for the words "the rank of Assistant District Superintendent" the words "such rank as the Local Government may prescribe in this behalf" shall be substituted.

Amendment of section 494, Code of Criminal Procedure, 1898.

134. Section 494 of the said Code,—

(*i*) the words "appointed by the Governor General in Council or the Local Government" shall be omitted;

(*ii*) after the words "prosecution of any person" the words "either generally or in respect of any one or more of the offences for which he is tried" shall be inserted;

(*iii*) after the word "discharged" in clause (*a*), the words "in respect of such offence or offences" shall be inserted; and

(*iv*) after the word "acquitted" in clause (*b*), the words "in respect of such offence or offences" shall be added.

Amendment of section 496, Code of Criminal Procedure, 1898.

135. To section 496 of the said Code the following proviso shall be added, namely:—

"Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (*4*), or section 117, sub-section (*3*)."

Amendment of section 497, Code of Criminal Procedure, 1898.

136. In section 497 of the said Code,—

(*i*) in sub-section (*1*), for the words "the offence of which he is accused" the words "an offence punishable with death or transportation for life" shall be substituted; and, to the same sub-section, the following proviso shall be added, namely:—

"Provided thats the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail";

(*ii*) in sub-section (*2*), for the words "such offence" the words "a non-bailable offence" shall be substituted;

(*iii*) after sub-section (*2*) the following sub-sections shall be inserted, namely:—

"(*3*) An officer or a Court releasing any person on bail under sub-section (*1*) or sub-section (*2*) shall record in writing his or its reasons for so doing.

(*4*) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered"; and

(*iv*) for sub-section (*3*) the following sub-section shall be substituted, namely:—

"(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody."

Amendment of section 504, Code of Criminal Procedure, 1898.

137. (*1*) In sub-section (*1*) of section 504 of the said Code, for the words "the said Presidency Magistrate" the words "such Presidency Magistrate" shall be substituted.

(*2*) After the same sub-section the following sub-section shall be inserted, namely:—

"(*1A*) When a commission is issued under this section to a Chief Presidency Magistrate he may delegate his powers and

duties under the commission to any Presidency Magistrate subordinate to him."

Amendment of section 505, Code of Criminal Procedure, 1898.

138. In sub-section (*1*) of section 505 of the said Code, after the word "directed" the words "or to whom the duty of executing such commission has been delegated" shall be inserted.

Amendment of section 514, Code of Criminal Procedure, 1898.

139. In section 514 of the said Code,-

(*i*) in sub-section (*3*), for the word "distress" the word "attachment" shall be substituted; and

(*ii*) in sub-section (*6*), the words "but the party who gave the bond may be required to find a new surety" shall be omitted, and, after the said sub-section, the following sub-section shall be inserted, namely :—

"(*7*) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond or of a bond executed in lieu of his bond under section 514B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved."

Insertion of new sections 514A and 514B in the Code of Criminal Procedure, 1898.

140. After section 514 of the said Code the following sections shall be inserted, namely :—

Procedure in case of insolvency or death of surety or when a bond is forfeited.

"514A. When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court, by whose order bond was taken, or a Presidency Magistrate or Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

Bond required from a minor.

514B. When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only."

Insertion of new section 516A in the Code of Criminal Procedure, 1898.

141. In Chapter XLIII of the said Code, before section 517 the following section shall be inserted, namely :—

Order for custody and disposal of property pending trial in certain

"516A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any enquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of."

Amendment of section 517, Code of Criminal Procedure, 1898.

142. In section 517 of the said Code,—

(*i*) in sub-section (*1*) after the word "disposal" the words "by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise" shall be inserted;

(*ii*) for sub-section (*3*) the following sub-section shall be substituted, namely :—

"(*3*) When an order is made under this section such order shall not, except where the property is livestock or subject to

speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of"; and

(iii) after sub-section (3) the following sub-section shall be inserted, namely :—

"(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal."

Amendment of section 522, Code of Criminal Procedure, 1898.

143. In section 522 of the said Code,—

(i) in sub-section (1), after the word "force" where it first occurs, the words "or show of force or by criminal intimidation" shall be inserted, and after the word "force" where it occurs for the second time, the words "or show of force or criminal intimidation" shall be inserted, and for the words "such person" the words "the person dispossessed" shall be substituted;

(ii) in the same sub-section, after the words "thinks fit" the words "when convicting such person or at any time within one month from the date of the conviction" shall be inserted; and

(iii) after sub-section (2) the following sub-section shall be added, namely :—

"(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision."

Amendment of section 525, Code of Criminal Procedure, 1898.

144. In section 525 of the said Code, for the words "or the Magistrate" the words "or if the Magistrate" shall be substituted, and after the word "owner" the words "or that the value of such property is less than ten rupees" shall be inserted.

Amendment of section 526, Code of Criminal Procedure, 1898.

145. In section 526 of the said Code,—

(i) in sub-clauses (ii) and (iii) of sub-section (1) the word "criminal" before the word "case" and in sub-clause (ii), the word "such" before the word "cases," shall be omitted;

(ii) in sub-section (5), for the word "convicted" the words "so ordered" shall be substituted, and for the words "the cost of the prosecutor" the words "any amount which the High Court has power under this section to award by way of costs to the person opposing the application" shall be substituted;

(iii) after sub-section (6) the following sub-section shall be inserted, namely :—

"(6A) Where any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of costs to any person who has opposed the application any expenses reasonably incurred by such person in consequence of the application"; and

(iv) for sub-section (8) the following sub-sections shall be substituted, namely :—

"(8) If, in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon.

(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it."

Amendment of section 527, Code of Criminal Procedure, 1898.

146. In sub-section (1) of section 527 of the said Code, the word "criminal," where it occurs before the word "case", shall be omitted.

Amendment of section 528, Code of Criminal Procedure, 1898.

147. In section 528 of the said Code,—

(i) sub-sections (1), (2), (3) and (4) shall be re-numbered (2), (3), (5) and (6), respectively, and the following shall be inserted as sub-section (1), namely :—

Sessions Judge may withdraw cases from Assistant Sessions Judge.

"(1) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him" ;

(ii) after sub-section (3), as re-numbered, the following sub-section shall be inserted, namely :—

"(4) Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself" ; and

(iii) for sub-section (6) as re-numbered, the following sub-section shall be substituted, namely :—

"(6) The head of a village under the Madras Village-police Regulation, 1816, or the Madras Village-police Regulation, 1821, is a Magistrate for the purposes of this section." XI of 1816. IV of 1821.

Amendment of section 537, Code of Criminal Procedure, 1898.

148. In section 537 of the said Code,—

(i) clause (b) shall be omitted ;

(ii) the word "want" where it occurs for the second time, shall be omitted ; and

(iii) the Illustration shall be omitted.

Amendment of section 538, Code of Criminal Procedure, 1898.

149. In section 538 of the said Code, for the word "distress", wherever it occurs, the word "attachment" shall be substituted.

Insertion of new sections 539A and 539B in the Code of Criminal Procedure, 1898.

150. After section 539 of the said Code the following sections shall be inserted, namely :—

Affidavit in proof of conduct of public servant.

"539A. (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

Local inspection.

539B. (*1*) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(*2*) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost:

Provided that, in the case of a trial by jury or with the aid of assessors, the Judge shall not act under this section unless such jury or assessors are also allowed a view under section 293."

Insertion of new section 540A in the Code of Criminal Procedure, 1898.

151. After section 540 of the said Code the following section shall be inserted, namely:—

Provision for inquiries and trial being held in the absence of accused in certain cases.

"540A. (*1*) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(*2*) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately."

Amendment of section 545, Code of Criminal Procedure, 1898.

152. In section 545 of the said Code,—

(*i*) for clause (*b*) of sub-section (*1*) the following clause shall be substituted, namely:—

"(*b*) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court"; and

(*ii*) to sub-section (*1*) the following clause shall be added, namely:—

"(*c*) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bonâ fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto."

Insertion of new section 546A in the Code of Criminal Procedure, 1898.

153. After section 546 of the said Code the following section shall be inserted, namely:—

Order of payment of certain fees paid by complainant in non-cognizable cases.

"546A. (*1*) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him, to pay to the complainant—

(*a*) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and

(*b*) any fees paid by the complainant for serving processes on his witnesses or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision."

Amendment of section 547, Code of Criminal Procedure, 1898.

154. In section 547 of the said Code, after the word "Code" the words "and the method of recovery of which is not otherwise expressly provided for" shall be inserted.

Substitution of new section for section 559, Code of Criminal Procedure, 1898.

155. For section 559 of the said Code the following section shall be substituted, namely :—

Provision for powers of Judges and Magistrates being exercised by their successors in office.

"559. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency-town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge."

Insertion of new section 561A in the Code of Criminal Procedure, 1898.

156. After section 561 of the said Code the following section shall be inserted, namely :—

Saving of inherent power of High Court.

"561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Substitution of new section for section 562, Code of Criminal Procedure, 1898.

157. For section 562 of the said Code the following section shall be substituted, namely :—

Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

"562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Subdivisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

(2) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(4) The provisions of sections 122, 126A and 406A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section."

Substitution of new section for section 565, Code of Criminal Procedure, 1898.

158. For section 565 of the said Code the following section shall be substituted, namely:—

Order for notifying address of previously convicted offender.

"565. (1) When any person having been convicted—

(a) by a Court in British India of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Indian Penal Code, or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment of either description for a term of three years or upwards, or XLV of 1860.

(b) by a Court or Tribunal in the territories of any Prince or State in India acting under the general or special authority of the Governor General in Council, or of any Local Government, of any offence which would, if committed in British India, have been punishable under any of the aforesaid sections or Chapters of the Indian Penal Code with like imprisonment for a like term, XLV of 1809.

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Subdivisional Magistrate, or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(5) Any person against whom an order has been made under this section and who refuses or neglects to comply with any rule so made shall be deemed within the meaning of section 176 of the Indian Penal Code to have omitted to give a notice required for the purpose of preventing the commission of an offence. XLV of 1860.

(6) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated."

Amendment of Schedule II, Code of Criminal Procedure, 1898.

159. In Schedule II to the said Code,—

(1) in column 1, the figures "405" occurring between the figures "404" and "406" shall be omitted;

(2) for the first entry in column 3, against section 213, the words "may arrest without warrant" shall be substituted;

(*3*) for the entry in column 3, against section 214, the words "shall not arrest without warrant" shall be substituted ;

(*4*) for the entry in column 3, against section 215, the words "May arrest without warrant" shall be substituted ;

(*5*) for the entry in column 3, against section 374, the words "Shall not arrest without warrant" shall be substituted ;

(*6*) for each of the entries in column 5 against sections 118, 119 and 120, occurring opposite the entries "If the offence be not committed" in column .2, the word "Bailable" shall be substituted ; and for the entry in column 5 opposite the entry "120-Concealing a design to commit an offence punishable with imprisonment, if the offence be committed" the words "According as the offence concealed is bailable or not" shall be substituted ;

(*7*) for the entry in column 5, against section 363, the word "Bailable" shall be substituted ; and, for the entry in the same column, against section 364, the words "Not bailable" shall be substituted ;

(*8*) for the entry in column 5, against section 477A, the word "Bailable" shall be substituted ;

(*9*) for the entry in column 5, against section 495, the word "Bailable" shall be substituted ;

(*10*) for each of the entries in column 6, against sections 343, 346 and 357, the words "Compoundable when permission is given by the Court before which the prosecution is pending" shall be substituted ; and, for each of the entries in the same column, against sections 344 and 347, the words "Not compoundable" shall be substituted ;

(*11*) for the entry in column 6, against section 403, the words "Compoundable when permission is given by the Court before which the prosecution is pending" shall be substituted ;

(*12*) for each of the entries in column 6 against sections 417, 418, 419 and 420, the words "Compoundable when permission is given by the Court before which the prosecution is pending" shall be substituted ;

(*13*) for the entry in column 6, against section 430, the words "Compoundable when permission is given by the Court before which the prosecution is pending" shall be substituted ; and for the entry in the same column against section 431, the words "Not compoundable" shall be substituted.

(*14*) for the first entry in column 6, against section 451, the following shall be substituted, namely :—"Compoundable when permission is given by the Court before which the prosecution is pending" ; and, for the second entry in that column, against the same section, the words "Not compoundable" shall be substituted ;

(*15*) for the entry in column 6, against section 482, the words "Compoundable when permission is given by the Court before which the prosecution is pending" shall be substituted ; and, for the entry in the same column, against section 484, the words "Not compoundable" shall be substituted ;

(*16*) for the entry in column 6, against section 486, the words "Compoundable with permission of the Court before which the prosecution is pending" shall be substituted ; and, for the entry in the same column, against section 487, the words "Not compoundable" shall be substituted ;

(*17*) for the entry in column 6, against section 494, the words "Compoundable with permission of the Court before which the prosecution is pending" shall be substituted ; and, for the entry in the same column, against section 495, the words "Not compoundable" shall be substituted ;

(*18*) for the entry in column 6, against section 508, the word "Compoundable" shall be substituted ;

(*19*) for the entry in column 6, against section 509, the words "Compoundable when permission is given by the Court before which the prosecution is pending" shall be substituted ; and, for the entry in the same column, against section 510, the words "Not compoundable" shall be substituted ;

(*20*) in the entry in column 7, against section 121, for the words "forfeiture of property" the word "fine" shall be substituted ;

(*21*) in the entry in column 7, against section 121A, after the word "years" the words "and fine" shall be inserted ;

(22) in the entry in column 7, against section 122, for the words "forfeiture of property" the word "fine" shall be substituted ;

(23) for the entry in column 7, against section 477A, the words "Imprisonment of either description for seven years, or fine, or both" shall be substituted ;

(24) for the entry in column 8, against section 294, the words "Any Magistrate" shall be substituted ;

(25) for the entry in column 8, against section 317, the words "Court of Session, Presidency Magistrate or Magistrate of the first class" shall be substituted ;

(26) in the entry in column 8, against section 318, the words "or second" shall be omitted ;

(27) for the entry in column 8, against section 327, the words "Court of Session, Presidency Magistrate, or Magistrate of the first class" shall be substituted; and, for the entry in the same column, against section 328, the words "Court of Session" shall be substituted ;

(28) for the entry in column 8, against section 368, the words "Court of Session, Presidency Magistrate or Magistrate of the first class" shall be substituted ;

(29) for the entry in column 8, against section 477A, the words "Court of Session, Presidency Magistrate or Magistrate of the first class" shall be substituted ;

(30) for the entry in column 8, against section 494, the words "Court of Session, Presidency Magistrate or Magistrate of the first class" shall be substituted, and, for the entry in the same column, against section 495, the words 'Court of Session" shall be substituted.

Amendment of Schedule III, Code of Criminal Procedure, 1898

160. In Schedule III to the said Code,—

(i) under Head I (*Ordinary Powers of a Magistrate of the Third class*)—

(1) in item (5), after the word "property" the words "and to dispose of claims to attached property" shall be inserted ;

(2) item (13) shall be omitted ;

(3) in item (14), after the word "detention" the words "not being detention in the custody of the police" shall be inserted ;

(4) the following item shall be inserted between items (14) and (15), namely :—

"(14a) Power to postpone issue of process and inquire into case himself, section 202" ;

(5) to item (18), the words, figures and letter "and to require fresh security section 514A" shall be added ;

(6) after item (18) the following item shall be inserted, namely :—

"(18a) power to make order as to custody and disposal of property pending inquiry or trial, section 516A" ;

(7) in item (20), the word "perishable" shall be omitted ;

(8) after item (20) the following items shall be added, namely :—

"(21) Power to require affidavit in support of application, section 539A" ;

"(22) Power to make local inspection, section 539B" ;

(ii) under Head II (*Ordinary Powers of a Magistrate of the Second Class*)—

(1) for item (3) the following item shall be substituted, namely :—

"(3) Power to postpone issue of process and to inquire into a case or direct investigation, section 202" ;

(2) item (4) shall be omitted ;

(iii) under Head III (*Ordinary Powers of a Magistrate of the First Class*)—

(1) in item (6), for the figures "126" the figures and letter "126A" shall be substituted ;

(2) between items (6) and (7) the following items shall be inserted, namely :—

"(6a) Power to make orders as to local nuisances, section 133" ;

(3) between items (7) and (8), the following items shall be inserted, namely :—

"(7a) Power to record statements and confessions during a police investigation, section 164 ;

(7aa) Power to authorise detention of a person in the custody of the police during a police investigation, section 167 ;

(7b) Power to hold inquests, section 174" ;

(4) After item (9) the following item shall be inserted, namely :—

"(9a) Power to tender pardon to accomplice during inquiry into case by himself, section 337" ;

(5) after item (12) the following items shall be inserted, namely :—

"(12a) Power to require fresh security, section 514A ;

(12b) Power to re-call case made over by him to another Magistrate, section 528 (4)";

(6) after item (13) the following item shall be added namely :—

"(14) Power to order released convicts to notify residen ce section 565";

(iv) in Head IV (*Ordinary Powers of a Subdivisional Magistrate*)—

(1) in the head note, after the words "Subdivisional Magistrate", the words "appointed under section 13" shall be inserted ;

(2) the following items shall be omitted, namely :—

"(4) Power to make orders as to local nuisances, section 133";

"(10) Power to hold inquest, section 174";

"(20) Power to order released convicts to notify residence, section 565";

(v) in Head V (*Ordinary Powers of a District Magistrate*)—

(1) after item (1) the following item shall be inserted, namely :—

"(1a) Power to try juvenile offenders, section 29A";

(2) After item (6) the following item shall be inserted, namely :—

"(6a) Power to order preliminary investigation by police-officer not below the rank of Inspector in certain cases, section 196B";

(3) after item (7) the following item shall be inserted, namely :—

"(7a) Power to tender pardon to accomplice at any stage of a case, section 337";

(4) in item (9), after the word "for" the words "keeping the peace or" shall be inserted ;

(5) After item (9) the following item shall be inserted, namely :—

"(9a) Power to hear appeals from orders of Magistrates refusing to accept or rejecting sureties, section 406A";

(6) In item (12), for the figures "436" the figures "437," and in item (13), for the figures "437" the figures "436" shall be substituted, and items (12) and (13) shall be re-numbered (13) and (12), respectively.

Amendment of Schedule IV, Code of Criminal Procedure, 1898.

181. In Schedule IV to the said Code,—

(i) from the list of powers with which a Magistrate of the first class may be invested by the Local Government, the following shall be omitted, namely :—

"(3) Power to make orders as to local nuisances, section 133";

"(6) Power to hold inquests, section 174";

"(14) Power to order released convicts to notify residence, section 565";

(ii) from the list of powers with which a Magistrate of the first class may be invested by the District Magistrate, item (3), namely, "Power to hold inquests, section 174", shall be omitted;

(iii) in the list of powers with which a Magistrate of the second class may be invested by the Local Government—

between items (3) and (4) the following items shall be inserted, namely:—

"(3a) Power to record statements and confessions during a police investigation, section 164;

(3b) Power to authorise detention of a person in the custody of the police during a police investigation, section 167";

(iv) from the list of powers with which a Magistrate of the third class may be invested by the Local Government, the following shall be omitted, namely:—

"(2) Power to make orders under section 144";

"(6) Power to commit for trial, section 206"

and from the list of powers with which such Magistrates may be invested by the District Magistrate, the following shall be omitted, namely:—

"(2) Power to make orders under section 144."

Amendment of Schedule V, Code of Criminal Procedure, 1898.

162. In Schedule V to the said Code,—

(i) in Form VI—

(a) in the ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS, for the words "Proclamation was duly issued" the words "Proclamation has been or is being duly issued" shall be substituted, and the words "and he has failed to appear" shall be omitted;

(b) in the ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED, for the words "Proclamation was duly issued" the words "Proclamation has been or is being duly issued" shall be substituted;

(c) in the ORDER AUTHORISING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR, for the words "Proclamation was duly issued" the words "Proclamation has been or is being duly issued" shall be substituted, and the words "but he has not appeared" shall be omitted;

(ii) in Forms X and XI, after the words "for the term of ", wherever they occur, the words "or until the completion of the inquiry in the matter of now pending in the Court, of ," and after the words "said term", wherever they occur, the words "or until the completion of the said inquiry" shall be inserted;

(iii) in Form XXX—

(a) in the heading, for the word "DISTRESS" the words "ATTACHMENT AND SALE" shall be substituted;

(b) after the words "dismissed as" the words "false and" shall be inserted; and

(c) the words "and cannot be recovered by distress of the moveable property of the said (name of complainant)" shall be omitted;

(iv) in Form XXXVII, after the figures "386" the figure, letter and brackets "(1) (a)" shall be inserted;

(v) in each of Forms XXXVII and XLI, the following amendments shall be made, namely :—

(a) in the heading, for the word "DISTRESS" the word "ATTACHMENT" shall be substituted ;

(b) for the words "make distress by seizure of any" the words "attach any" shall be substituted.

(c) for the words "such distress" the words "such attachment" shall be substituted ; and

(d) for the words "property distrained" the words "property attached" shall be substituted ;

(vi) after form XXXVII the following Form shall be inserted, namely :—

"XXXVIIA.—BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE.

(*See section 388.*)

WHEREAS I, (*name*), inhabitant of (*place*), have been sentenced to pay a fine of rupees and in default of payment thereof to undergo imprisonment for ; and whereas the Court has been pleased to order my release until the day of on condition of my executing a bond for my appearance on that day ;

I hereby bind myself to appear before the Court of at o'clock on the said day of next, and in case of making default herein, I bind myself to forfeit to His Majesty the King Emperor of India the sum of Rupees .

Dated this day of 19

(*Signature*).

Where a bond with sureties is to be executed, add—

We do hereby declare ourselves sureties for the abovenamed that he will appear before the Court of on the day of next; and, in case of his making default therein, we bind ourselves jointly and severally to forfeit to His Majesty the King Emperor of India the sum of Rupees .

(*Signature.*)"

Repeal of section 31, Court-fees Act, 1870.

163. Section 31 of the Court-fees Act, 1870, is hereby repealed. VII of 1870

Commencement.

164. This Act shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint.

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 2nd April, 1923, and is hereby promulgated for general information :—

ACT NO. XX OF 1923.

An Act to give effect to certain Articles of the International Convention for the Suppression of the Traffic in Women and Children.

WHEREAS it is expedient further to amend the Indian Penal Code in order to give effect to the International Convention for the suppression of the Traffic in women and children signed at Geneva on behaf of the Governor General in Council on the 28th day of March, 1922; It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Indian Penal Code (Amendment) Act, 1923.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India appoint.

Amendment of section 366, Act XLV of 1860.

2. To section 366 of the said Code the following paragraph shall be added, namely :—

"and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

Insertion of new sections 366A and 366B in Act XLV of 1860.

3. After section 366 of the said Code the following sections shall be inserted, namely :—

Procuration of minor girl.

"366A. Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Importation of girl from foreign country.

366B. Whoever imports into British India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse withanother person,

and whoever with such intent or knowledge imports into British India from any State in India any such girl who has with the like intent or knowledge been imported into India, whether by himself or by another person,

shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine."

Amendment of Schedule II, Code of Criminal Procedure, 1898.

4. In the Second Schedule to the Code of Criminal Procedure, 1898, after the entry relating to section 366 of the Indian Penal Code the following entries shall be inserted, namely :— V of 1898.

"366A	Procuration of minor girl.	May arrest without warrant.	Warrant	Not bailable.	Not compoundable.	Imprisonment of either description for ten years and fine.	Court of Session.
366B	Importation of girl from foreign country.	May arrest without warrant.	Warrant	Not bailable.	Not compoundable.	Imprisonment of either description for ten years and fine.	Court of Session."

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 2nd April, 1923, and is hereby promulgated for general information :—

ACT NO. XXIII OF 1923.

An Act for the removal of doubts regarding the right of women to be enrolled and to practise as legal practitioners.

WHEREAS it is expedient to remove certain doubts which have arisen as to the right of women to be enrolled and to practise as legal practitioners; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Legal Practitioners (Women) Act, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

Definition.

2. In this Act, "legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879. XVII of 1879.

Women not to be disqualified by reason only of sex.

3. Notwithstanding anything contained in any enactment in force in British India or in the letters patent of any High Court or in any rule or order made under or in pursuance of any such enactment or letters patent, no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practising as such ; and any such rule or order which is repugnant to the provisions of this Act shall, to the extent of such repugnancy, be void.

L. GRAHAM,

Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, AUGUST 22, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 25th July 1923, and is hereby promulgated for general information:—

ACT NO. XXVII OF 1923.

An Act further to amend the Indian Income-tax Act, 1922, for certain purposes.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for certain purposes hereinafter appearing; It is hereby enacted as follows:— XI of 1922.

Short title.

1. This Act may be called the Indian Income-tax (Further Amendment) Act, 1923.

Amendment of section 4, Act XI of 1922.

2. In sub-section (*2*) of section 4 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), for the words "shall be deemed to be profits and gains of the year in which they are received or brought into British India," the following words shall be substituted, namely:— XI of 1922.

"shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be profits and gains of the year in which they are so received or brought."

Insertion of new Chapter VA in Act XI of 1922.

3. After Chapter V of the said Act the following Chapter shall be inserted, namely:—

"CHAPTER VA.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

Liability to tax of occasional shipping.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer

of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Return of profits and gains.

44B. (1) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

Adjustment.

44C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be."

L. GRAHAM,
Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, SEPTEMBER 19, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 5th August 1923, and is hereby promulgated for general information :—

ACT No. XXXVIII OF 1923.

An Act further to amend the Land Acquisition Act, 1894, for certain purposes.

WHEREAS it is expedient further to amend the Land Acquisition Act, 1894, for certain purposes hereinafter appearing ; It is hereby enacted as follows :— I of 1894.

Short title and commencement.

1. (*1*) This Act may be called the Land Acquisition (Amendment) Act, 1923.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint.

Amendment of section 4, Act I of 1894.

2. In sub-section (*1*) of section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), after the word "locality", where it first occurs, the words "is needed or" shall be inserted. I of 1894.

Insertion of new section 5A in Act I of 1894.

3. After section 5 of the said Act the following heading and section shall be inserted, namely :—

"*Objections.*

Hearing of objections.

5A. (*1*) Any person interested in any land which has been notified under section 4, sub-section (*1*), as being needed or likely to be needed for a public purpose or for a Company, may, within thirty days after the issue of the notification object to the acquisition of the land or of any land in the locality, as the case may be.

(*2*) Every objection under sub-section (*1*) shall be made to the Collector in writing, and the Collector shall give the

objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Local Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Local Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

Amendment of section 6, Act I 1894.

4. In sub-section (1) of section 6 of the said Act, for the words "whenever it appears to the Local Government" the following shall be substituted, namely :—

"when the Local Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2.")

Amendment of section 11, Act I of 1894.

5. In section 11 of the said Act, after the words "the value of the land," the words "at the date of the publication of the notification under section 4, sub-section (1)" shall be inserted.

Amendment of section 17, Act I of 1894.

6. To section 17 of the said Act the following sub-section shall be added, namely :—

(4) In the case of any land to which, in the opinion of the Local Government, the provisions of sub-section (1) or sub-section (2) are applicable, the Local Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).

Amendment of section 23, Act I of 1894.

7. In clause *first* of sub-section (1) of section 23 of the said Act, for the words "declaration relating thereto under section 6;" the words "notification under section 4, sub-section (1)," shall be substituted.

Amendment of section 24, Act I of 1894.

8. In clause *seventhly* of section 24 of the said Act, for the words "declaration under section 6 ' the words "notification under section 4, sub-section (1)," shall be substituted.

Amendment of section 40, Act I of 1894.

9. In sub-section (1) of section 40 of the said Act, after the word "satisfied," the words "either on the report of the Collector under section 5A, sub-section (2), or" shall be inserted.

Amendment of section 41, Act I of 1894.

10. In section 41 of the said Act,—

(a) the words "Such officer shall report to the Local Government the result of the inquiry, and," shall be omitted ; and

(b) after the word "satisfied" the following words shall be inserted, namely :—

"after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40."

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 5th August 1923, and is hereby promulgated for general information :—

ACT NO. XL OF 1923.

An Act further to amend the Indian Electricity Act, 1910

WHEREAS it is expedient further to amend the Indian Electricity Act, 1910; It is hereby enacted as follows :— IX of 1910.

Short title.

1. This Act may be called the Indian Electricity (Amendment) Act, 1923.

Insertion of new section 29A in Act IX of 1910

2. After section 29 of the Indian Electrtcity Act, 1910, the following section shall be inserted, namely :— IX of 1910.

Application of section 18 to aerial lines maintained by railways

"29A. The provisions of sub-sections (*3*) and (*4*) of section 18 and of the *Explanation* thereto shall apply in the case of any aerial line placed by any railway administration as defined in section 3 of the Indian Railways Act, 1890, as if references therein to the licensee were references to the railway administration." IX of 1890.

L. GRAHAM,

Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, SEPTEMBER 26, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 3rd August 1923, and is hereby promulgated for general information :—

ACT No. XXXVII OF 1923.

An Act further to amend the Code of Criminal Procedure, 1898, for certain purposes.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, for certain purposes hereinafter appearing ; It is hereby enacted as follows :— V of 1898.

Short title and commencement.

1. (*1*) This Act may be called the Code of Criminal Procedure (Second Amendment) Act, 1923.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint.

Amendment of section 364, Act V of 1898.

2. In section 364 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code),— V of 1898.

(*a*) in sub-section (*3*) the words " unless he is a Presidency Magistrate," shall be omitted ; and

(*b*) in sub-section (*4*), for the words and figures " or section 362, sub-section (*2A*) " the following shall be substituted, namely :—

" or in the course of a trial held by a Presidency Magistrate ".

Substitution of new section for section 388, Act V of 1898

3. For section 388 of the said Code the following section shall be substituted, namely :—

Suspension of execution of sentence of imprisonment

"388. (*1*) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(*a*) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(*b*) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and, if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(*2*) The provisions of sub-section (*1*) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment."

Amendment of section 562, Act V of 1898.

4. After sub-section (*1*) of section 562 of the said Code the following sub-section shall be inserted, namely :—

Conviction and release with admonition.

"(*1A*) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition." XLV of 1860

Amendment of Schedule V, Act V of 1898

5. In Schedule V to the said Code, in Form XXXVIIA,—

(*a*) the words "until the day of " shall be omitted; and

(*b*) for the words "on that day;" and for the words "on the said day of next," and for the words "on the day of next;" the words "on the following date (*or* dates), namely :— " shall be substituted.

Repeal

6. Sections 98 and 104 of the Code of Criminal Procedure (Amendment) Act, 1923, are hereby repealed. XVIII of 1923.

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

THE following Act of the Indian Legislature received the assent of the Governor General on the 5th August 1923, and is hereby promulgated for general information :—

ACT No. XLII OF 1923.

An Act to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties.

WHEREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties; It is hereby enacted as follows:—

Preliminary.

Short title, extent and commencement.

1. (*1*) This Act may be called the Mussalman Wakf Act, 1923;

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas;

(*3*) This section shall come into force at once; and

(*4*) The Local Government may, by notification in the local official Gazette, direct that the remaining provisions of this Act, or any of them which it may specify, shall come into force in the Province, or any specified part thereof, on such date as it may appoint in this behalf.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli;

(*b*) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of a High Court, such Court, subordinate to the High Court, as the Local Government may, by notification in the local official Gazette, designate in this behalf;

(*c*) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property;

(*d*) "prescribed" means prescribed by rules made under this Act; and

(*e*) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants. VI of 1913.

Statements of Particulars.

Obligation to furnish particulars relating to wakf.

3. (*1*) Within six months from the commencement of this Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated, or to any one of two or more

such Courts, a statement containing the following particulars, namely :—

(a) a description of the wakf property sufficient for the identification thereof ;

(b) the gross annual income from such property ;

(c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter ;

(d) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property ;

(e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate ;

(f) the amount set apart under the wakf for—

(i) the salary of the mutwalli and allowances to individuals ;

(ii) purely religious purposes ;

(iii) charitable purposes ;

(iv) any other purposes ; and

(g) any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(3) Where—

(a) a wakf is created after the commencement of this Act, or

(b) in the case of a wakf such as is described in section 3 of the Wakf Validating Act, 1913, the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder, I of 1913.

the statement referred to in sub-section (1) shall be furnished in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.

Publication of particulars and requisition of further particulars.

4. (1) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

(2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.

Statement of Accounts, and Audit.

Statement of accounts.

5. Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty-first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty-first day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf :

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

Audit of account.

6. Every statement of accounts shall, before it is furnished to the Court under section 5, be audited--

(*a*) in the case of a wakf the gross income of which during the year in question, after deduction of the land revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the Local Government unner section 144 of the Indian Companies Act, 1913, or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout British India ; or VII of 1913.

(*b*) in the case of any other wakf, by any person authorised in this behalf by general or special order of the said Court.

General Provisions.

Mutwalli entitled to pay cost of audit, etc., from wakf funds.

7. Notwithstanding anything contained in the deed or instrument creating any wakf, every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act.

Verification.

8. Every statement of particulars furnished under section 3 or section 4, and every statement of accounts furnished under section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings. V of 1908.

Inspection and copies.

9. Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4, or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6.

Penalty.

Penalties.

10. Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall lie upon him, fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrne in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by section

6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

Rules.

Power to make rules.

11. (*1*) The Local Government may, after previous publication, by notification in the local official Gazette, make rules to carry into effect the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the additional particulars to be furnished by mutwallis under clause (*g*) of sub-section (*1*) of section 3;

(*b*) the fees to be charged upon applications made to a Court under sub-section (*1*) of section 4;

(*c*) the form in which the statement of accounts referred to in section 5 shall be furnished, and the particulars which shall be contained therein;

(*d*) the powers which may be exercised by auditors for the purpose of any audit referred to in section 6 and the particulars to be contained in the reports of such auditors;

(*e*) the fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9;

(*f*) the safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act; and

(*g*) any other matter which is to be or may be prescribed.

Savings.

12. Nothing in this Act shall—

(*a*) affect any other enactment for the time being in force in British India providing for the control or supervision of religious or charitable endowments; or

(*b*) apply in the case of any wakf the property of which—

(*i*) is being administered by the Treasurer of Charitable Endowments, the Administrator General, or the Official Trustee; or

(*ii*) is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

Exemption

13. The Local Government may, by notification in the local official Gazette, exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community.

L. GRAHAM,

Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 25th July 1923, and is hereby promulgated for general information :—

ACT NO. XXVI OF 1923.

An Act further to amend the Code of Civil Procedure, 1908, for certain purposes.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908, for certain purposes hereinafter appearing; It is hereby enacted as follows :— V of 1908

Short title.

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1923.

Amendment of section 60, Act V of 1908

2. In clause (*i*) of sub-section (*1*) of section 60 of the Code of Civil Procedure, 1908, for the word "twenty," wherever it occurs, the word "forty," and for the word "forty," the word "eighty" shall be substituted. V of 1908

L. GRAHAM,

Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, OCTOBER 3, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 5th August 1923, and is hereby promulgated for general information :—

ACT NO. XXXIX OF 1923.

An Act further to amend the Indian Ports Act, 1908.

WHEREAS it is expedient further to amend the Indian Ports Act, 1908; It is hereby enacted as follows :— XV of 1908.

Short title. **1.** This Act may be called the Indian Ports (Amendment) Act, 1923.

Amendment of section 6, Act XV of 1908. **2.** In sub-section (*1*) of section 6 of the Indian Ports Act, 1908 (hereinafter referred to as the said Act), after clause (*e*) the following clause shall be inserted, namely :— XV of 1908.

"(*ee*) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same ;"

Amendment of section 21, Act XV of 1908. **3.** In section 21 of the said Act—

(*a*) to sub-section (*1*) after the word "landfloods" the following shall be added, namely :—

"and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (*ee*) of sub-section (*1*) of section 6 apply, otherwise than in accordance with such rules";

(*b*) in sub-section (*2*)—

(*i*) after the words "such other thing" the words "or so discharges any oil or water mixed with oil" shall be inserted, and

(*ii*) for the words "or thrown" the words "thrown or discharged" shall be substituted; and

(*c*) in sub-section (*3*)—

(*i*) after the words "such other thing" the words "or from so discharging any oil or water mixed with oil" shall be inserted, and

(*ii*) for the words "or throw it" the words "throw or discharge the same" shall be substituted,

(*d*) in sub-section (*4*), after the words "thrown into" the words "or the oil or water mixed with oil is discharged in or into" shall be inserted.

L. GRAHAM,
Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, OCTOBER 31, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

THE following Act which was made by the Governor General under the provisions of section 67-B of the Government of India Act and has received the assent of His Majesty signified by an order of His Majesty in Council is hereby published for general information :—

An Act to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt, or to excite disaffection against, Princes or Chiefs of States in India or the Governments or Administrations established in such States.

WHEREAS it is expedient to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt, or to excite disaffection against, Princes or Chiefs of States in India or the Governments or Administrations established in such States; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Indian States (Protection against Disaffection) Act, 1922.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "book" and "newspaper" have the meanings respectively assigned to them by the Press and Registration of Books Act, 1867 ; XXV of 1867.

(*b*) "disaffection" includes disloyalty and all feelings of enmity ; and

(*c*) "document" includes any painting, drawing, photograph, or other visible representation.

Penalty.

3. (*1*) Whoever edits, prints or publishes, or is the author of, any book, newspaper or other document which brings or is intended to bring into hatred or contempt, or excites or is intended to excite disaffection towards, any Prince or Chief of a State in India or the Government or Administration established in any such State, shall be punishable with imprisonment which may extend to five years, or with fine, or with both.

(*2*) No person shall be deemed to commit an offence under this section in respect of any book, newspaper or other document which, without exciting or being intended to excite hatred, contempt or disaffection, contains comments expressing disapprobation of the measures of any such Prince, Chief, Government or Administration as aforesaid with a view to obtain their alteration by lawful means, or disapprobation of the administrative or other action of any such Prince, Chief, Government or Administration.

Power to forfeit certain publications or to detain them in course of transmission through post.

4. The provisions of sections 99A to 99G of the Code of Criminal Procedure, 1898, and of sections 27B to 27D of the Indian Post Office Act, 1898, shall apply in the case of any book, newspaper or other document containing matter in respect of which any person is punishable under section 3 in like manner as they apply in the case of a book, newspaper or document containing seditious matter within the meaning of those sections.

V of 1898.
VI of 1898.

Courts by which and conditions subject to which offences may be tried

5. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall proceed to the trial of any offence under section 3, and no Court shall proceed to the trial of any such offence except on complaint made by, or under authority from, the Governor General in Council.

L. GRAHAM,

Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, NOVEMBER 7, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 3rd August, 1923, and is hereby promulgated for general information :—

ACT NO. XXXVI OF 1923.

An Act further to amend the Indian Paper Currency Act, 1923.

WHEREAS it is expedient further to amend the Indian Paper Currency Act, 1923 ; it is hereby enacted as follows :— X of 1923.

Short title.

1. This Act may be called the Indian Paper Currency (Amendment) Act, 1923.

Amendment of section 18, Act X of 1923.

2. To clause (*a*) of sub-section (*8*) of section 18 of the Indian Paper Currency Act, 1923 (hereinafter referred to as the said Act), after the word "purchased" the following words shall be added, namely :— X of 1923

"or, in the case of bullion obtained by melting down silver coin issued under the authority of the Governor General in Council, at the rate of one rupee for 165 grains troy of fine silver."

Amendment of section 19, Act X of 1923.

3. To sub-section (3) of section 19 of the said Act the following *Explanation* shall be added, namely :—

"*Explanation.*—For the purposes of this sub-section, the sum expended in the purchase of silver bullion obtained by melting down silver coin issued under the authority of the Governor General in Council shall be deemed to be the value of the bullion calculated at the rate of one rupee for 165 grains troy of fine silver."

Amendment of section 20, Act X of 1923.

4. In section 20 of the said Act, for the word "fifty" the words "one hundred and twenty" shall be substituted.

L. GRAHAM,
Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, NOVEMBER 21, 1923.

PART V.

Acts of the Indian Legislative Council assented by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 27th July 1923, and is hereby promulgated for general information :—

ACT NO. XXIX OF 1923.

An Act further to amend the Code of Civil Procedure, 1908.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908. It is hereby enacted as follows :— V of 1908.

Short title

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1923.

Amendment of rule 32 of Order XXI in Schedule I, Act V of 1908.

2. In sub-rule (*1*) of rule 32 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908 (hereinafter referred to as the said Order), after the word "enforced" the following shall be inserted, namely :— V of 1908.

"in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction."

Amendment of rule 33 of Order XXI in Schedule I, Act V of 1908.

3. In rule 33 of the said Order,—

(*a*) in sub-rule (*1*), after the words "passing a decree" the words "against a husband" shall be inserted, and for the words "shall not be executed by detention in prison" the words "shall be executed in the manner provided in this rule" shall be substituted ; and

(*b*) in sub-rule (*2*), the words "and the decreeholder is the wife" shall be omitted.

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 31st July 1923, and is hereby promulgated for general information :—

ACT No. XXXV OF 1923.

An Act further to amend the Code of Criminal Procedure, 1898.

Whereas it is expedient to give to mukhtars the right to practise in certain Criminal Courts and further to amend the Code of Criminal Procedure, 1898, for that purpose ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Code of Criminal Procedure (Further Amendment) Act, 1923. V of 1898.

Amendment of section 4, Act V of 1898.

2. In clause (*r*) of sub-section (*1*) of section 4 of the Code of Criminal Procedure, 1898, after the words "means a pleader" the words "or a mukhtar" shall be inserted, and the words "mukhtar or" shall be omitted. V of 1898.

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 5th August 1923, and is hereby promulgated for general information :—

ACT NO. XLI OF 1923.

An Act to amend the Charitable and Religious Trusts Act, 1920.

WHEREAS it is expedient to amend the Charitable and Religious Trusts Act, 1920; It is hereby enacted as follows :— XIV of 1920

Short title. **1.** This Act may be called the Charitable and Religious Trusts (Amendment) Act, 1923.

Amendment of section 2, Act XIV of 1920. **2.** In section 2 of the Charitable and Religious Trusts Act, 1920, after the words "the Court of the District Judge," the words "or any other Court empowered in that behalf by the Local Government" shall be inserted. XIV of 1920.

L. GRAHAM,

Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, NOVEMBER 28, 1923.

PART V.

Acts of the Indian Legislature assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October 1923, and is hereby promulgated for general information :—

ACT NO. XLIII OF 1923.

An Act further to amend the Indian Stamp Act, 1899.

WHEREAS it is expedient further to amend the Indian Stamp Act, 1899 ; It is hereby enacted as follows :— II of 1899.

Short title.

1. This Act may be called the Indian Stamp (Amendment) Act, 1923.

Amendment of Schedule I, Act II of 1899.

2. In Schedule I to the Indian Stamp Act, 1899,— II of 1899.

(*i*) In each of the following Articles, namely, No. 19, No. 36, No. 37 and No. 52, in the second column, for the words "One anna" the words "Two annas" shall be substituted ;

(*ii*) In Article No. 47—

(*a*) in Division B, in the first column, for the words "Fire-Insurance" the words "Fire-Insurance and other classes of Insurance, not elsewhere included in this Article, covering goods, merchandise, personal effects, crops, and other property against loss or damage ;" and

(*b*) in Division E. in the first column, for the words "of sea-insurance or a policy of fire-insurance" the words "of the nature specified in Division A or Division B of this Article"

shall be substituted ;

(*iii*) For Article No. 49 the following shall be substituted, namely :—

" Promissory note [as defined by section 2 (*22*)]—

(*a*) when payable on demand—

(*i*) when the amount or value does not exceed Rs. 250 ;	One anna.
(*ii*) when the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000 ;	Two annas.
(*iii*) in any other case.	Four annas.
(*b*) when payable otherwise than on demand.	The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand."

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 31st July, 1923, and is hereby promulgated for general information :—

ACT No. XXXI OF 1923.

An Act to amend the Indian Territorial Force Act, 1920, and the Auxiliary Force Act, 1920, for certain purposes.

WHEREAS it is expedient to amend the Indian Territorial Force Act, 1920, and the Auxiliary Force Act, 1920, for certain purposes hereinafter appearing; It is hereby enacted as follows :— XLVIII of 1920. XLIX of 1920.

Short title

1. This Act may be called the Indian Territorial and Auxiliary Forces (Amendment) Act, 1923.

Amendment of section 11, Act XLVIII of 1920.

2. To section 11 of the Indian Territorial Force Act, 1920, the following sub-section shall be added, namely :— XLVIII of 1920.

"(*3*) Where an offence punishable under the Indian Army Act, 1911, or, as the case may be, under that Act as modified under sub-section (*2*). has been committed by any person whilst subject to that Act under the provisions of this section, such person may be taken into and kept in military custody, and tried and punished for such offence under that Act, although he has ceased to be so subject as aforesaid, in like manner as he might have been taken into and kept in military custody, tried or punished, if he had continued to be so subject : VIII of 1911.

Provided that no such person shall be kept in military custody after he has ceased to belong to the Indian Territorial Force, unless he has been taken into or kept in military custody on account of the offence before the date on which he ceased so to belong, nor shall he be kept in military custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial had already commenced before such expiry."

Amendment of section 21, Act XLIX of 1920.

3. Section 21 of the Auxiliary Force Act, 1920, shall be re-numbered as sub-section (*1*) of section 21, and to that section as so re-numbered the following sub-section shall be added, namely :— XLIX of 1920.

"(*2*) Where an offence punishable under the Army Act has been committed by any person whilst subject to that Act under the provisions of sub-section (*1*), such person may be taken into and kept in military custody and tried and punished for such offence, although he has ceased to be so subject as aforesaid, in like manner as he might have been taken into and kept in military custody, tried or punished if he had continued to be so subject : 44 & 45 Vict., c. 58.

Provided that no such person shall be kept in military custody after he has ceased to belong to the Auxiliary Force, India, unless he has been taken into or kept in military custody on account of the offence before the date on which he ceased so to belong, nor shall he be kept in military custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial had already commenced before such expiry."

L. GRAHAM,

Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 31st July, 1923, and is hereby promulgated for general information :—

ACT NO. XXXII OF 1923.

An Act further to amend the Indian Lunacy Act, 1912.

WHEREAS it is expedient further to amend the Indian Lunacy Act, 1912 ; It is hereby enacted as follows :— IV of 1912.

Short title. **1.** This Act may be called the Indian Lunacy (Amendment) Act, 1923.

Amendment of section 20, Act IV of 1912. **2.** To section 20 of the Indian Lunacy Act, 1912, the following proviso shall be added, namely :— IV of 1912.

"Provided that no reception order shall continue to have effect—

(*a*) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(*b*) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed."

L. GRAHAM,
Secretary to the Government of India (offg.).



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WEDNESDAY, MARCH 21, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 19th February, 1923:—

No. 8 OF 1923.

A Bill further to amend the Government Savings Bank Act, 1873.

WHEREAS it is expedient further to amend the Government Savings Banks Act, 1873; It is hereby enacted as follows:— V of 1873

Short title. **1.** This Act may be called the Government Savings Banks (Amendment) Act, 192 .

Amendment of section 3, Act V of 1873. **2.** In section 3 of the Government Savings Banks Act, 1873 (hereinafter referred to as the said Act), for the definition of "Secretary" the following shall be substituted, namely:— V of 1873.

"'Secretary' means, in the case of a Post Office Savings Bank, the Postmaster-General appointed for the province in which the Savings Bank is situate."

Substitution of new section for section 4, Act V of 1873. **3.** For section 4 of the said Act the following of section shall be substituted, namely:—

"**4.** If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate VII of 1889.

Payment on death of depositor.

Act, 1889, is not within three months of the death of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is, then—

(a) if the deposit does not exceed three thousand rupees the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, or

(b) if the deposit does not exceed one hundred rupees, any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor General in Council, may, subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate."

Amendment of sections 6 and 7, Act V of 1873.

4. In sections 6 and 7 of the said Act, after the words "Secretary of any such Bank" the words "or any officer empowered under section 4" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to facilitate withdrawal of small sums of money left in the Post Office Savings Bank Accounts of deceased depositor. By virtue of section 3 of the Post Office Cash Certificates Act, 1917, the provisions of the Bill will be applicable also in the case of payments due on 5-year Cash Certificates forming part of the estate of a deceased person.

S. D'A. CROOKSHANK.

Dated 12th February, 1923.

H. MONCRIEFF SMITH,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 10th February, 1923:—

No. 5 OF 1923.

A Bill further to amend the Indian Stamp Act, 1899.

WHEREAS it is expedient further to amend the Indian Stamp Act, 1899; it is hereby enacted as follows:— II of 1899.

Short title.

1. This Act may be called the Indian Stamp (Amendment) Act, 1923.

Amendment of Act II, 1899, Schedule I.

2. In Schedule I to the Indian Stamp Act, 1899—

(i) In each of the following articles, namely, No. 19, No. 36, No. 37 and No. 52, in the second column for the words "one anna" the words "two annas" shall be substituted;

(ii) For Article No. 49, the following shall be substituted, namely:—

Promissory note [as defined by section 2 (*22*).]

(*a*) When payable on demand—

(*i*) when the amount or value is less than Rs. 250;	Two annas
(*ii*) in any other case	Four annas.
(*b*) When payable otherwise than on demand—	The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand.

(*iii*) In article No. 47—

(*a*) in Division B, in the first column, for the words "Fire-Insurance" the words "Fire-Insurance and other classes of Insurance, not elsewhere included in this article, covering goods, merchandise, personal effects, crops, and other property against loss or damage;" and

(*b*) in Division E, in the first column, for the words "of sea-insurance or a policy of fire-insurance" the words "of the nature specified in Division A or Division B of this article"

shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

Non-judicial stamps, although transferred to the provinces as a source of revenue, are subject to legislation by the Indian Legislature under Item 20 in Part II of Schedule I of the Devolution Rules.

2. When the Government of Bengal last year proposed to raise the rates of stamp duty on those instruments, it was decided to reserve the following for all-India legislation since uniformity of duty in these particular cases was essential :—

No. in Schedule I to the Indian Act.	Description.
1	Acknowledgment.
13	Bill of Exchange.
19	Share Certificate.
21	Cheque.
28	Delivery Order in respect of goods.
36	Letter of Allotment of shares.
37	Letter of Credit.
47	Policy of Insurance.
49	Promissory Note.
52	Proxy.
53	Receipt.
60	Shipping Order.

In February, 1922, Local Governments were asked their views whether any, and if so, which, of the instruments referred to above could bear an enhancement of the existing rates of duty and to what extent. After considering their replies, it has been decided that the duty on certain of these instruments can be raised.

3. The Government of India have also decided to take this opportunity of amending Article 47 of Schedule I of the Stamp Act so as to bring under clause B of the Article certain classes of insurance which have hitherto, for the purposes of stamp duty, been taken under clause D. This amendment has been supported by all Local Governments.

4. The object of the present Bill is to give effect to these proposals.

C. A. INNES.

Delhi, the 3rd February, 1923.



The Calcutta Gazette

WEDNESDAY, MARCH 28, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 24th February, 1923 :—

NO. 10 OF 1923.

A Bill to amend the Indian Income-tax Act, 1922.

WHEREAS it is expedient to amend the Indian Income-tax Act, 1922 ; It is hereby enacted as follows :— XI of 1922.

Short title.

1. This Act may be called the Indian Income-tax (Amendment) Act, 1923.

Amendment of section 7, Act XI of 1922.

2. To sub-section (*1*) of section 7 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), the following explanation shall be added, namely :— XI of 1922.

"*Explanation.*—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section."

Amendment of section 68, Act XI of 1922.

3. (*1*) In section 68 of the said Act, in the second proviso, after the words "under that Act" the words "or under the Super-tax Act, 1920" shall be inserted and for the words and figures "section 19 of the said Act" the words "that section" shall be substituted.

(*2*) The amendments made in the said Act by sub-section (*1*) shall have effect as if they had been made on the 1st day of April, 1922.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to correct the drafting of the Income-tax Act of 1922 in two sections, in which it has been found that the wording of the Act as passed did not give correct effect to the intensions of the Legislature.

2. It was intended when the Act was framed that the perquisite enjoyed by a person in the shape of a rent-free residence should be assessed to income-tax. It has, however, been found that as section 7 (*1*) of the Act at present stands, a rent-free residence still cannot be taxed. Clause 2 of this Bill gives effect to the intentions of the Legislature.

3. As proviso (2) to section 68 of the Act of 1922 at present strands, it has kept alive for 1922-23 only the adjustments of the assessments of income-tax made in 1921-22, but the intention when the Act of 1922 was framed was to continue the "adjustment system" mentioned in section 19 of the Income-tax Act, 1918 (VII of 1918), both as regards income-tax and super-tax. Clause 3 of the Bill gives effect to that intention.

BASIL P. BLACKETT.

Dated Delhi, The 21st February 1923.

H. MONCRIEFF SMITH,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 1st March, 1923 :—

No. 11 OF 1923.

A Bill to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the Indian Tariff Act, 1894, to fix the maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax.

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the duty leviable on certain articles under the Indian Tariff Act, 1894, to fix maximum rates of postage under the Indian Post Office Act, 1898, to amend the Indian Paper Currency Act, 1923, and to fix rates of income-tax. It is hereby enacted as follows :— VIII of 1894. VI of 1898.

Short title, extent and duration.

1. (*1*) This Act may be called the Indian Finance Act, 1923.

(*2*) It extends to the whole of British India, including the Sonthal Parganas and British Baluchistan.

(*3*) Sections 2, 4 and 6 shall remain in force only up to the 31st day of March, 1924.

Fixation of salt duty

2. (*1*) The provisions of section 7 of the Indian Salt Act, 1882, shall, in so far as they enable the Governor-General in Council to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of British India other than Burma and Aden, be construed as if they imposed such duty at the rate of two rupees and eight annas per maund of eighty-two and two-sevenths pounds avoirdupois of salt manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule made under that section. XII of 1882.

(*2*) Section 2 of the Indian Finance Act, 1922, is hereby repealed. XII of 1922.

Amendment of Act VIII of 1894.

3. (*1*) In Schedule II to the Indian Tariff Act, 1894, the amendments specified in the First Schedule to this Act shall be made. VIII of 1894.

(*2*) In Schedule III to the same Act, in Item No. 3, for the entry in the fourth column the entry "5 per cent." shall be substituted.

Postal rates.

4. With effect from the first day of April, 1923, the schedule contained in the Second Schedule to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. VI of 1898.

Amendment of Act of 1923.

5. In sub-section (*7*) of section 19 of the Indian Paper Currency Act, 1923, for the figures "1923" the figures "1924" shall be substituted.

Income-tax and super-tax.

6. (*1*) Income-tax for the year beginning on the first day of April, 1923, shall be charged at the rates specified in Part I of the Third Schedule.

(*2*) The rates of super-tax for the year beginning on the first day of April, 1923, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Third Schedule. XI of 1922.

(*3*) For the purposes of the Third Schedule, "total income" means total income as defined in clause (*15*) of section 2 of the Indian Income-tax Act, 1922. XI of 1922.

It is hereby declared that it is expedient in the public interest that the provisions of clauses 2 and 3 of this Bill should have temporary effect under the provisions of the Provisional Collection of Taxes Act, 1918. XVI of 1918.

SCHEDULE I.

Amendments to be made in Schedule II to the Indian Tariff Act, 1894.

[*See section 3 (1)*.]

1. In Item No. 4 after the words "all sorts" the words "except ochres and other pigment ores" shall be added.

2. For Item No. 14 the following shall be substituted, namely :—

"CINCHONA BARK and the alkaloids extracted therefrom including QUININE."

3. In Item No. 29 for the words "spirit, which has been rendered effectually and permanently unfit for human consumption" the words "Denatured Spirit" shall be substituted.

4. In Item No. 30 to the entry in the fourth column the words "or 15 per cent. *ad valorem*, whichever is higher" shall be added.

5. In Item No. 31 the following shall be added to each of the entries in the fourth column, namely :—

"or 15 per cent. *ad valorem*, whichever is higher."

6. In Item No. 34 in the second column the words "and saccharine produce of all sorts" shall be omitted.

7. After Item No. 34 the following heading and items shall be inserted, namely :—

	SACCHARINE.		
"34A.	SACCHARINE (except in tablets) ...	Pound ...	20 0
"34B.	SACCHARINE TABLETS	*Ad valorem* ...	25 per cent. or Rs. 20 per pound of saccharine contents, whichever is higher."

8. In Item No. 43 for the entry in the fourth column, the following shall be substituted, namely :—"24-0 or 15 per cent. *ad valorem*, whichever is higher."

9. For item No. 51 the following items shall be substituted, namely :—

"51 MACHINERY, namely, such of the following articles as are not specified in any of the following numbers, namely, Nos. 15, 16, 53, 54, 55, 87, 90-A., 96, 103, 111 and 127 :—

(1) prime-movers, boilers, locomotive engines and tenders for the same, portable engines (including power-driven road rollers, fire engines and tractors), and other machines in which the prime-mover is not separable from the operative parts ;

(2) machines and sets of machines to be worked by electric, steam, water, fire or other power, not being manual or animal labour, or which before being brought into use require to be fixed with reference to other moving parts ;

(3) apparatus and appliances, not to be operated by manual or animal labour, which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose ;

(4) control gear, self-acting or otherwise, and transmission-gear designed for use with any machinery above specified, including belting of all materials and driving chains but not driving ropes ;

(5) bare hard-drawn electrolytic copper wires and cables and other electrical wires and cables, insulated or not ; and poles, troughs, conduits and insulators designed as parts of a transmission system, and the fittings thereof.

Note.—The term "industrial system" used in sub-clause (3) means an installation designed to be employed directly in the performance of any process or series of processes necessary for the manufacture, production or extraction of any commodity.

51A COMPONENT PARTS OF MACHINERY, as defined in No. 51, namely, each parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose :

Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable."

10. Item No. 52 and the heading thereto shall be omitted.

11. Item No. 56 shall be omitted.

12. For Item No. 61 the following shall be substituted, namely :—

"61 IRON OR STEEL, anchors and cables.

" " " beams, joists, pillars, girders and other structural shapes, whether fabricated or not screw piles, bridge work and other descriptions of iron or steel not ordinarily, used for other than building purposes ; including ridging, guttering, flashing and continuous roofing ; also including expanded metal and other descriptions of iron or steel designed for use in the reinforcing of concrete ; but not including builders' hardware, that is to say, grates, stoves, ventilator, door and window fittings and the like ; (*See* No 90.)

" " " bolts and nuts, including hook-bolts and nuts for roofing.

" " " hoops and strips.

" " " nails, rivets and washers, all sorts.

" " " pipes and tubes and fittings therefor, that is to say, bends, boots, elbows, tree sockets, flanges, plugs, valves, cocks and the like.

" " " rails, chairs, sleepers, bearing and fish-plates, spikes (commonly known as dog-spikes), switches and crossings other than those described in No. 63, also lever-boxes, clips and tie-bars.

" " " sheets and plates, all sorts, whether fabricated or not, including discs and circles.

" " " wire, including fencing-wire, piano-wire and wire-rope, but excluding wire netting (*See* No. 97)."

13. In Item No. 63 the words "engines, tenders" shall be omitted, and for the second proviso, the following proviso shall be substituted, namely :—

"Provided also that nothing shall be deemed to be dutiable hereunder which is dutiable under No. 51 or No. 51A."

14. After Item No. 63 the following item shall be inserted, namely :—

"63A COMPONENT PARTS OF RAILWAY MATERIALS, as defined in No. 63, namely, such parts only as are essential for the working of railways and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose :

Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the railway material to which they belong, if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable."

15. To Item No. 64 the following proviso shall be added, namely :—

"Provided that articles of machinery as defined in No. 51 or No. 51A shall, when separately imported, not be deemed to be included hereunder."

16. For Item No. 87 and the heading thereto the following shall be substituted, namely :—

CONVEYANCES.

"87 CONVEYANCES, including tramcars, motor-omnibuses, motor-lorries, motor-vans, passenger lifts, carriages, carts, jinrikshas, bath-chairs, perambulators, trucks, wheel barrows, bicycles, tricycles and all other sorts of conveyances not otherwise specified, and component parts and accessories thereof, except such parts and accessories of the motor vehicles above-mentioned as are also adapted for use as parts or accessories of motor-cars, motor-cycles or motor-scooters (*See* No. 127)."

17. After Item No. 90 the following item shall be inserted, namely :—

"90A ELECTRICAL CONTROL GEAR AND TRANSMISSION GEAR, namely, switches, fuses and current-breaking devices of all sorts and descriptions, designed for use in circuits of less than ten *amperes* and at a pressure not exceeding 250 volts, and regulators for use with motors designed to consume less than 187 watts ; bare or insulated copper wires and cables, any one core of which has a sectional area of less than one-eightieth part of a square inch, and wires and cables of other metals of not more than equivalent conductivity ; and line insulators, including also cleats, connectors, leading-in-tubes and the like, of types and sizes such as are ordinarily used in connection with the transmission of power for other than industrial purposes, and the fittings thereof."

18. To Item No. 96 the following shall be added, namely :—

"and any machines (except such as are designed to be used exclusively in industrial processes which require for their operation less than one quarter of one brake-horse-power."

19. In Item No. 103 after the word "tiles" the words "firebricks not being component parts of any article included in No. 51 or No. 63" shall be inserted, and after the word "specified" the words "including bitumen and other insulating materials" shall be added.

20. In Item No. 127 the words "bicycles and tricycles" and the words "or of bicycles or tricycles" shall be omitted.

21. To Item No. 130 the words "and parts thereof" shall be added.

22. In Item No. 139 the word "and" shall be inserted after the word "cycles" and the words "bicycles and tricycles" shall be omitted.

SCHEDULE II.

Schedule to be inserted in the Indian Post Office Act, 1898.

(*See section 4.*)

"THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

(*See section 7.*)

Letters

For a weight not exceeding two and a half tolas	One anna.
For every two and a half tolas, or fraction thereof, exceeding two and a half tolas	One anna.

Postcards.

Single	Half an anna.
Reply	One anna.

Book, Pattern and Sample Packets.

For every five tolas or fraction thereof	Half an anna.

Registered Newspapers.

For a weight not exceeding eight tolas	Quarter of an anna.
For a weight exceeding eight tolas and not exceeding twenty tolas ...	Half an anna.
For every twenty tolas, or fraction thereof, exceeding twenty tolas ...	Half an anna.

Parcels.

For a weight not exceeding twenty tolas	Two annas.
For a weight exceeding twenty tolas and not exceeding forty tolas ...	Four annas.
For every forty tolas, or fraction thereof exceeding forty tolas	Four annas."

SCHEDULE III.

(*See section 6.*)

PART I.

Rates of Income-tax.

	Rate.
A. In the case of every individual, every unregistered firm and every undivided Hindu family—	
(1) When the total income is less than Rs. 2,000	*Nil.*
(2) When the total income is Rs. 2,000 or upwards, but is less than Rs. 5,000	Five pies in the rupee.
(3) When the total income is Rs. 5,000 or upwards, but is less than Rs. 10,000	Six pies in the rupee.
(4) When the total income is Rs. 10,000 or upwards, but is less than Rs. 20,000	Nine pies in the rupee.
(5) When the total income is Rs. 20,000 or upwards, but is less than Rs. 30,000	One anna in the rupee.
(6) When the total income is Rs. 30,000 or upwards, but is less than Rs. 40,000	One anna and three pies in the rupee.
(7) When the total income is Rs. 40,000 or upwards	One anna and six pies in the rupee.
B. In the case of every company, and every registered firm, whatever its total income	One anna and six pies in the rupee.

PART II.

Rates of Super-tax.

	Rate.
In respect of the excess over forty thousand rupees of total income :—	
(1) in the case of every company	One anna in the rupee.
(2) (*a*) in the case of every Hindu undivided family—	
(*i*) in respect of the first twenty-five thousand rupees of the excess ...	*Nil.*
(*ii*) for every rupee of the next twenty-five thousand rupees of such excess	One anna in the rupee.

	Rate.
(*b*) in the case of every individual and every unregistered firm, for every rupee of the first fifty thousand rupees of such excess.	One anna in the rupee.
(*c*) in the case of every individual, every unregistared firm and every Hindu undivided family—	
(*i*) for every rupee of the second fifty thousand rupees of such excess .	One and a half annas in the rupee.
(*ii*) for every rupee of the next fifty thousand rupees of such excess .	Two annas in the rupee.
(*iii*) for every rupee of the next fifty thousand rupees of such excess .	Two and a half annas in the rupee.
(*iv*) for every rupee of the next fifty thousand rupees of such excess .	Three annas in the rupee.
(*v*) for every rupee of the next fifty thousand rupees of such excess .	Three and a half annas in the rupee.
(*vi*) for every rupee of the next fifty thousand rupees of such excess .	Four annas in the rupee.
(*vii*) for every rupee of the next fifty thousand rupees of such excess .	Four and a half annas in the rupee.
(*viii*) for every rupee of the next fifty thousand rupees of such excess .	Five annas in the rupee.
(*ix*) for every rupee of the next fifty thousand rupees of such excess .	Five and a half annas in the rupee.
(*x*) for every rupee of the remainder of the excess	Six annas in the rupee.

STATEMENT OF OBJECTS AND REASONS.

1. The object of this Bill is to provide the additional revenue referred to in my speech introducing the Budget for 1923-24 and to continue certain provisions of the Indian Finance Act, 1922 (XII of 1922) which would otherwise cease to have effect from the 1st April 1923.

2. Clause 2 of the Bill provides for the raising of the salt duty from Re. 1-4 to Rs. 2-8 per maund.

3. Opportunity has been taken to make certain minor amendments in the Tariff Schedule necessitated by administrative reasons. These are embodied in clause 3 (*1*). The substantive changes made are :—

(1) The adoption of a new definition of "Machinery and its component parts" and consequential changes in the entries relating to railway and building materials, ships, etc.

(2) The raising of the duty on saccharine.

(3) The withdrawal of the concessional rate in respect of tea chests and of lead therefor.

Clause 3 (*2*) reduces the export duty on raw hides and skins from 15 to 5 per cent. *ad valorem* and dispenses with the system of rebates.

4. Clauses 4 and 6 provide for the continuance of the rates of postage, income-tax and super-tax prescribed by the Indian Finance Act (XII of 1922) while clause 5 provides for the credit to revenue, for a further period of one year, *i.e.*, till the 31st March 1924, of interest on securities forming part of the Paper Currency Reserve.

5. The changes mentioned in paragraphs 2 and 3 are intended to come into effect from the 1st March 1923; the rest from April 1st. The Bill provides that the provisions other than those relating to the tariff shall remain in force till the 31st March 1924.

BASIL P. BLACKETT.

The 28th February, 1923.

H. MONCRIEFF SMITH,

Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, APRIL 11, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 26th March, 1923:—

No. 13 OF 1923.

THE CANTONMENTS BILL.

TABLE OF CONTENTS.

CHAPTER I.

PRELIMINARY.

CHAPTER II.

DEFINITION AND DELIMITATION OF CANTONMENTS.

CHAPTER III.

CANTONMENT AUTHORITIES AND CANTONMENT BOARDS.

Cantonment Authorities.

CHAPTER IV.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

CHAPTER V.

TAXATION.

Imposition of Taxation.

Assessment List.

Remission and Refund.

Charge on Immoveable Property.

Octroi, Terminal Tax and Toll.

Appeals.

Payment and Recovery of Taxes.

Special provisions relating to taxation.

SECTIONS.

97. Power to prohibit or exempt from taxation.
98. Power to make special provision for conservancy in certain cases.
99. Exemption from ordinary tax when provision made under section 98.
100. Exemption of poor persons.
101. Composition.
102. Irrecoverable debts.
103. Obligation to disclose liability.
104. Immaterial error not to effect liability.
105. Distraint not to be invalid by reason of immaterial defect.

CHAPTER VI.

CANTONMENT FUND AND PROPERTY.

Cantonment Fund.

106. Cantonment fund.
107. Custody of cantonment fund.

Property.

108. Property.
109. Application of cantonment fund and property.
110. Acquisition of immoveable property.
111. Power to make rules regarding cantonment fund and property.

CHAPTER VII.

CONTRACTS.

112. Contracts by whom to be executed.
113. Sanction.
114. Execution of contracts.
115. Contracts improperly executed not to be binding on a Cantonment Authority.

CHAPTER VIII.

DUTIES AND DISCRETIONARY FUNCTIONS OF CANTONMENT AUTHORITIES.

116. Duties of Cantonment Authority.
117. Discretionary functions of Cantonment Authority.

CHAPTER IX.

PUBLIC SAFETY AND SUPPRESSION OF NUISANCES.

General Nuisances.

118. Penalty for causing nuisances.

Dogs.

119. Registration and control of dogs.

Traffic.

120. Rule of the road.

Prevention of fire, etc.

121. Use of inflammable materials for building purposes.
122. Stacking or collecting inflammable materials.
123. Care of naked lights.
124. Regulation of cinematographic and dramatic performances.

CHAPTER X.

SANITATION AND THE PREVENTION AND TREATMENT OF DISEASE.

Sanitary Authorities.

Conservancy and Sanitation.

Burial and Burning Grounds.

Prevention of Infectious or Contagious Diseases.

Hospitals and Dispensaries.

Control of Traffic for Hygienic purposes.

Special conditions regarding essential services.

CHAPTER XI.

CONTROL OVER BUILDINGS, STREETS, BOUNDARIES, TREES, ETC.

Buildings.

Streets.

Boundaries and trees.

CHAPTER XII.

MARKETS, SLAUGHTER-HOUSES, TRADES AND OCCUPATIONS.

Trades and Occupations.

SECTIONS.

209. Provision of washing places.
210. Licences required for carrying on of certain occupations.
211. Conditions which may be attached to licences.

General Provisions.

212. Power to vary licence.
213. Carrying on trade, etc., without licence or in contravention of section 212.
214. Feeding animals on dirt, etc.

Entry, Inspection and Seizure.

215. Powers of entry and seizure.

Import of Cattle and Flesh.

216. Import of cattle and flesh.

CHAPTER XIII.

WATER SUPPLY, DRAINAGE AND LIGHTING.

Water Supply.

217. Maintenance of water supply.
218. Control over sources of public water supply.
219. Power to require maintenance or closing of private source of public drinking water supply.
220. Supply of water.
221. Power to require water supply to be taken.
222. Supply of water under agreement.
223. Cantonment Authority not liable for failure of supply.
224. Conditions of universal application.
225. Supply to persons outside cantonment.
226. Penalty.

Water, Drainage and other Connections.

227. Power of Cantonment Authority to lay wires, connections, etc.
228. Wires, etc., laid above surface of ground.
229. Connection with main not to be made without permission.
230. Power to prescribe ferrules and to establish meters, etc.
231. Power of inspection.
232. Power to fix rates and charges.

Application of this Chapter to Government Water Supplies.

233. Government water supply.
234. Recovery of charges.

CHAPTER XIV.

REMOVAL AND EXCLUSION FROM CANTONMENTS AND SUPPRESSION OF SEXUAL IMMORALITY.

235. Power to remove brothels and prostitutes.
236. Penalty for loitering and importuning for purposes of prostitution.
237. Removal of lewd persons from cantonment.
238. Removal and exclusion from cantonments of disorderly persons.
239. Removal and exclusion from cantonment of seditious persons.
240. Penalty.

CHAPTER XV.

POWERS, PROCEDURE, PENALTIES AND APPEALS.

Entry and Inspection.

Appeals and Revision.

CHAPTER XVI.

RULES AND BYE-LAWS.

CHAPTER XVII.

SUPPLEMENTAL PROVISIONS.

A Bill to consolidate and amend the law relating to the administration of cantonments.

PRELIMINARY.

WHEREAS it is expedient to consolidate and amend the law relating to the administration of cantonments; it Is hereby enacted as follows:—

CHAPTER I.

Short title, extent and commencement.

1. (*1*) This Act may be called the Cantonments Act, 192 .

(*2*) It extends to the whole of British India, including British Baluchistan.

(*3*) The Governor General in Council may, by notification in the Gazette of India, direct that this Act, or any provisions thereof which he may specify, shall come into force on such date as he may appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*i*) "Assistant Health Officer" means the medical officer appointed by the Officer Commanding the District to be the Assistant Health Officer for a cantonment;

(*ii*) "Board" means a Cantonment Board constituted under this Act;

(*iii*) "brigade area" means one of the brigade areas, whether occupied by a brigade or not, into which India is for military purposes for the time being divided, and includes for all or any of the purposes of this Act any area which the Governor General in Council may, by notification in the Gazette of India, declare to be a brigade area for such purpose or purposes;

(*iv*) "building" means any house, hut, out-house, shed, stable or other roofed structure, for whatever purpose or of whatever material constructed, or any part thereof, and includes a well, but does not include a tent or other portable and temporary shelter;

(*v*) "Cantonment Authority" means a Board or, in the case of a cantonment where a Board has not been constituted or has ceased to exist, the Commanding Officer of the Cantonment;

(*vi*) "casual election" means an election held to fill a casual vacancy;

(*vii*) "casual vacancy" means a vacancy occurring otherwise than by efflux of time in the office of an elected member of a Board;

(*viii*) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the Governor General in Council may, by notification in the Gazette of India, declare to be a Command for all or any of the purposes of this Act;

(*ix*) "Commanding Officer of the cantonment" means the military officer for the time being in command of the forces in a cantonment, or, if that officer is the Officer Commanding the District, the military officer who would be in command of those forces in the absence of the Officer Commanding the District;

(*x*) "dairy" includes any farm, cattle-shed, milk-stores, milk-shop or other place from which milk is supplied or is kept for purposes of sale or is manufactured for sale into butter, ghee, cheese or curds, and, in relation to a dairyman who does not occupy any premises for the sale of milk, includes any place in which he keeps the vessels used by him for the storage or sale of milk;

(*xi*) "dairyman" includes the keeper of a cow, buffalo, goat, ass or other animal, the milk of which is offered or is intended to be offered for sale for human consumption, and any purveyor of milk and any occupier of a dairy;

(*xii*) "Executive Engineer" means the Public Works officer of that grade, or the military Works officer of the corresponding grade, having charge of the military works in a cantonment, and includes the officer of whatever grade in immediate executive engineering charge of a cantonment;

(*xiii*) "Executive Officer" means the person appointed under this Act to be the Executive Officer of a cantonment;

(*xiv*) "Health Officer" means the senior executive medical officer in military employ on duty in a cantonment;

(*xv*) "hill cantonment" means any cantonment declared by the Local Government, by notification in the local official Gazette, to be a hill cantonment for the purposes of this Act;

(*xvi*) "hut" means any building, no material portion of which above the plinth level is constructed of masonry or of squared timber framing or of iron framing;

(*xvii*) "infectious or contagious disease" includes cholera, leprosy, enteric fever, small-pox, tuberculosis, diphtheria, plague, influenza, and any other epidemic, endemic or infectious disease which the Local Government may, by notification in the local official Gazette, declare to be an infectious or contagious disease for the purposes of this Act;

(*xviii*) "inhabitant," in relation to a cantonment, means any person ordinarily residing or carrying on business or owning or occupying immoveable property therein, and in case of a dispute means any person declared by the District Magistrate to be an inhabitant;

(*xix*) "intoxicatiag drug" means opium, ganja, bhang, charas and any preparation or admixture thereof, and includes any other intoxicating substance or liquid which the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare to be an intoxicating drug for the purposes of this Act;

(*xx*) "market" includes any place where persons assemble for the purpose of selling meat, fish, fruit, vegetables, live-stock or any other article of food;

(*xxi*) "military officer" means—

(*a*) a person who, being an officer within the meaning of the Army Act or the Air Force Act, is commissioned and in pay as an officer doing military or air force duty with His Majesty's military or air forces, or is an officer doing such duty in any arm, branch or part of those forces; or 44 and 45 Vict., c. 58.

(*b*) a person doing military or air force duty as a warrant officer with either of those forces or with any arm, branch or part thereof, whether he is or is not an officer within the meaning of the Army Act or the Air Force Act; 44 and 45 Vict., c. 58.

(*xxii*) "nuisance" includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing, or which is or may be dangerous to life or injurious to health or property;

(*xxiii*) "occupier" includes an owner in occupation of, or otherwise using, his own land or building;

(*xxiv*) "Officer Commanding the District" means the Officer Commanding any one of the districts into which India is for military purposes for the time being divided, or any brigade area which does not form part of any such district, or any area which the Governor General in Council may, by notification in the Gazette of India, declare to be such a district for all or any of the purposes of this Act;

(*xxv*) "ordinary election" means an election held to fill a vacancy in the office of an elected member of a board arising by efflux of time;

(*xxvi*) "owner" includes any person who is receiving or is entitled to receive the rent of any building or land, whether on his own account or on behalf of himself and others or as an agent or trustee or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant;

(*xxvii*) "party wall" means a wall forming part of a building and used or constructed to be used for the support or separation of adjoining buildings belonging to different owners, or constructed or adapted to be occupied by different persons;

(*xxviii*) "private market" means a market which is not maintained by the Cantonment Authority and which is licensed by it under the provisions of this Act;

(*xxix*) "private slaughter-house" means a slaughter-house which is not maintained by the Cantonment Authority and which is licensed by it under the provisions of this Act;

(*xxx*) "public market" means a market maintained by a Cantonment Authority;

(*xxxi*) "public place" means any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not;

(*xxxii*) "public slaughter-house" means a slaughter-house maintained by a Cantonment Authority;

(*xxxiii*) "shed" means a slight or temporary structure for shade or shelter;

(*xxxiv*) "slaughter-house" means any place ordinarily used for the slaughter of animals for the purpose of selling the flesh thereof for human consumption;

(*xxxv*) "soldier" means a person who is a soldier or airman within the meaning of the Army Act or the Air Force Act, and who is not a military officer; 44 and 45 Vict., c. 58.

(*xxxvi*) "spirituous liquor" means any fermented liquor, any wine, or any alcoholic liquid obtained by distillation or the sap of any kind of palm tree, and includes any other liquid containing alcohol which the Local Government, with the previous sanction of Governor General in Council, may, by notification in the local official Gazette, declare to be a spirituous liquor for the purposes of this Act;

(*xxxvii*) "street" includes any way, road, lane, square, court, alley, passage or open space in a cantonment, whether a thoroughfare or not and whether built upon or not, over which the public have a right of way and also the road-way or foot-way over any bridge or causeway;

(*xxxviii*) "vehicle" means a wheeled conveyance of any description which is capable of being used on a street, and includes a motor-car, motor lorry, motor-omnibus, cart, locomotive, tram-car, hand-cart, truck, motor-cycle, bicycle, tricycle and rickshaw; and

(*xxxix*) "water-works" includes all lakes, tanks, streams, cisterns, pumps, wells, reservoirs, aqueducts, water-trucks, sluices, mains, pipes, culverts, hydrants, stand-pipes, and conduits, and all machinery, lands, buildings, bridges, and things, used for or intended for the purpose of supplying water to a cantonment.

CHAPTER II.

DEFINITION AND DELIMITATION OF CANTONMENTS.

Definition of cantonments.

3. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare any place or places in which any part of His Majesty's regular forces or regular air-force is quartered or which, being in the vicinity of any such place or places, is or are required for the service of such forces to be a cantonment for the purposes of this Act and of all other enactments for the time being in force, and with the like sanction, may, by a like notification, declare that any cantonment shall cease to be a cantonment.

(2) The Local Government, with the like sanction, may, by a like notification, define the limits of any cantonment for the aforesaid purposes.

Alteration of limits of cantonments.

4. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare its intention to include within a cantonment any local area situated in the immediate vicinity thereof or to exclude from a cantonment any local area comprised therein.

(2) Any inhabitant of a cantonment or local area in respect of which a notification has been published under sub-section (1) may, within six weeks from the date of the notification, submit in writing to the Local Government through the Officer Commanding-in-Chief, the Command, an objection to the notification, and the Local Government shall take such objection into consideration.

(3) On the expiry of six weeks from the date of the notification, the Local Government may, with the previous sanction of the Governor General in Council, after considering the objections, if any, which have been submitted under sub-section (2), by notification in the local official Gazette, include the local area in respect of which the notification was published under sub-section (1), or any part thereof, in the cantonment or, as the case may be, exclude such area or any part thereof from the cantonment.

The effect of including area in cantonment.

5. When, by a notification under section 4, any local area is included in a cantonment, such area shall thereupon become subject to this Act and to all other enactments for the time being in force throughout the cantonment and to all notifications, rules, regulations, bye-laws, orders and directions issued or made thereunder.

Disposal of cantonment fund when area ceases to be a cantonment.

6. (1) When, by a notification under section 3, any cantonment ceases to be a cantonment and the local area comprised therein is immediately placed under the control of a local authority, the cantonment fund and property vesting in the Cantonment Authority shall vest in such local authority and the liabilities of the Cantonment Authority shall be transferred to such local authority.

(2) When, in like manner, any cantonment ceases to be a cantonment and the local area comprised therein is not immediately placed under the control of a local authority, the balance of the cantonment fund and other property vesting in the Cantonment Authority shall vest in His Majesty, and the liabilities of the Cantonment Authority shall be transferred to the Secretary of State in Council.

Disposal of cantonment fund when area ceases to be included in a cantonment.

7. (1) When by a notification under section 4, any local area forming part of a cantonment ceases to be under the control of a particular Cantonment Authority and is immediately placed under the control of some other local authority such portion of the cantonment fund and other property vesting in the Cantonment Authority, and such portion of the liabilities of the Cantonment Authority, as the Governor General in Council may, by general or special order, direct, shall be transferred to that other local authority.

(2) When, in like manner, any local area forming part of a cantonment ceases to be under the control of a particular Cantonment Authority and is not immediately placed under the control of some other local authority, such portion of the cantonment fund and other property vesting in the Cantonment Authority shall vest in His Majesty, and such portion of the liabilities of the Cantonment Authority shall be transferred to the Secretary of State in Council, as the Governor General in Council may, by general or special order, direct.

Application of funds and property transferred under sections 6 and 7.

8. Any cantonment fund or portion of a cantonment fund or other property of a Cantonment Authority vesting in His Majesty under the provisions of section 6 or section 7 shall be applied in the first place to satisfy any liabilities of the Cantonment Authority transferred under such provisions to the

Secretary of State in Council and in the second place for the benefit of the inhabitants of the local area which has ceased to be a cantonment or, as the case may be, part of a cantonment.

Limitation of operation of Act.

9. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, exclude from the operation of any part of this Act any part of a cantonment, or direct that any provisions of this Act shall, in the case of any cantonment specified in the notification in which there is no Board, apply with such modifications as may be so specified.

CHAPTER III.

CANTONMENT AUTHORITIES AND CANTONMENT BOARDS.

Cantonment Authorities.

Cantonment Authority and Executive Officer.

10. (*1*) For every cantonment beyond the limits of a Presidency town there shall be Cantonment Authority and an Executive Officer.

(*2*) Where a cantonment is situated within the limits of a Presidency-town, the functions assigned to any authority by or under this Act shall, subject to the provisions of any other law for the time being in force, be discharged by such authority as the Local Government may, by notification in the local official Gazette, appoint in this behalf.

Local Government to decide whether Cantonment Board shall be constituted.

11. The Local Government may, by notification in the local official Gazette, order in respect of any cantonment that a Cantonment Board shall be constituted therein, and may, by a like notification, order that any Board so constituted shall cease to exist.

Incorporation of Cantonment Authority.

12. (*1*) Every Board shall, by the name of the Board of the place by reference to which the cantonment is known, be a body corporate having perpetual succession and a common seal with power to acquire and hold property both moveable and immoveable and to contract and shall, by the said name, sue and be sued.

(*2*) In the case of any cantonment where there is no Board, the Cantonment Authority shall be a corporation sole by the name of the Cantonment Authority of the place by reference to which the cantonment is known, and as such Cantonment Authority shall have perpetual succession and an official seal with power to acquire and hold property both moveable and immoveable and to contract and shall, by the said name, sue and be sued.

Appointment of Executive Officer.

13. The Executive Officer of every cantonment shall be appointed by the Governor General in Council and, in a cantonment where there is a Board, shall be the Secretary, but shall not be a member, thereof.

Constitution of Cantonment Board.

14. (*1*) Every Board shall consist of the following members, namely :—

(*a*) the Commanding Officer of the cantonment;

(*b*) a Magistrate of the first class nominated by the District Magistrate;

(*c*) the Health Officer;

(*d*) the Executive Engineer;

(*e*) such military officers not exceeding four in number as may be nominated by the Commanding Officer of the cantonment by order in writing:

Provided that the Commanding Officer of the cantonment may, if he thinks fit, with the sanction of the Officer Commanding the District, nominate in place of any military officer whom he is empowered to nominate under this clause any person, whether in the service of the Government or not, who is ordinarily resident in the cantonment or the vicinity thereof, to represent any interest or community not otherwise represented on the Board;

(*f*) such number of members elected under this Act as is equal to the number of members nominated under clauses (*b*) to (*e*):

Provided that where the total civil population of a cantonment is, according to the latest census, less than two thousand five hundred in number, the Local Government may, by notification in the local official Gazette, declare that the provisions of clauses (*e*) and (*f*) shall not apply in the case of that cantonment, and may, with the concurrence of the Officer Commanding-in-Chief, the Command, by a like notification nominate as members of the Board not more than three persons who are resident in the cantonment or in the vicinity thereof and who either own land or house property in the cantonment or carry on business therein.

(*2*) Every election, nomination or appointment of a member of a Board and every vacancy in the membership thereof shall be notified by the Local Government in the local official Gazette.

Term of office of members.

15. (*1*) Save as otherwise provided in this section, the term of office of a member of a Board shall be three years and shall commence from the date of the notification of his election or nomination under sub-section (*2*) of section 14, or from the date on which the vacancy has occurred in which he is elected or nominated, whichever date is later.

(*2*) The term of office of an *ex-officio* member of a Board shall continue so long as he is holds the office in virtue of which he is such a member.

(*3*) The term of office of a member elected to fill a casual vacancy shall commence from the date of election and shall continue so long only as the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(*4*) An outgoing member shall, unless the Local Government otherwise directs, continue in office until the election or nomination of his successor is notified under sub-section (*2*) of section 14.

(*5*) Any outgoing member may, if qualified, be re-elected or re-nominated.

Filling of vacancies.

16. (*1*) Vacancies arising by efflux of time in the office of an elected member of a Board shall be filled by an ordinary election to be held on such date as the Local Government may, by notification in the local official Gazette, direct.

(*2*) A casual vacancy shall be filled by a casual election the date of which shall be fixed by the Local Government by notification in the local official Gazette, and shall be, as soon as may be, after the occurrence of the vacancy:

Provided that no casual election shall be held to fill a vacancy occurring within three months of any date on which the vacancy will occur by efflux of time, but such vacancy shall be filled at the next ordinary election.

Vacancies in special cases.

17. (*1*) If from any cause at an ordinary election no member is elected, or if the elected member is unwilling to serve on the Board, the outgoing member shall, if qualified and willing to serve, be deemed to have been re-elected.

(*2*) If in any such case the outgoing member is not qualified or is not willing to serve, or if at a casual election no member is elected, the vacancy shall be filled by nomination by the Local Government with the concurrence of the Officer Commanding-in-Chief, the Command.

(*3*) The term of office of a member nominated or deemed to have been re-elected under this section shall expire at the time at which it would have expired if he had been elected at the ordinary or casual election, as the case may be.

Oath or affirmation.

18. (*1*) Every person who is, by virtue of his office, or who is nominated or elected to be, a member of a Board shall, before taking his seat, make at a meeting of the Board an oath or affirmation of his allegiance to the Crown in the following form, namely:—

"I, A. B., having become / been elected / been nominated a member of this Board, do solemnly swear (*or affirm*) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

(*2*) If any such person fails to make the oath or affirmation within such time as the Local Government considers reasonable, the Local Government shall, by notification in the local official Gazette, declare his seat to be vacant.

Resignation.

19. (*1*) Any nominated or elected member of a Board who wishes to resign his office may forward his resignation in writing through the President of the Board to the Officer Commanding-in-Chief, the Command, who shall forward it for orders to the Local Government.

(*2*) If the Local Government accepts the resignation, such acceptance shall be communicated to the Board and thereupon the seat of the member resigning shall become vacant.

President and Vice-President.

20. (*1*) The Commanding Officer of the cantonment shall be the President of the Board.

(*2*) There shall be a Vice-President of every Board elected from among the members at a meeting thereof.

Term of office of Vice-President.

21. (*1*) The term of office of a Vice-President shall be—

(*a*) in the case of a person who is not in the service of the Government, three years or the residue of his term of office as a member, whichever is less, or

(*b*) in the case of a person in the service of the Government, the residue of the term of his office as a member.

(*2*) A Vice-President may resign his office by notice in writing to the President and, on the resignation being accepted by the Board, the office shall become vacant.

Duties of President.

22. (*1*) It shall be the duty of the President of every Board—

(*a*) unless prevented by reasonable cause, to convene and preside at all meetings of the Board and to regulate the conduct of business thereat;

(*b*) to exercise supervision and control over the financial and executive administration of the Board;

(*c*) to perform all the duties and exercise all the powers specifically imposed or conferred on the President by or under this Act; and

(*d*) subject to any restrictions, limitations and conditions imposed by this Act, to exercise executive power for the purpose of carrying out the provisions of this Act and to be directly responsible for the fulfilment of the purposes of this Act.

(*2*) The President may, by order in writing, empower the Vice-President to exercise all or any of the powers and duties referred to in clause (*c*) of sub-section (*1*) other than any power, duty or function which he is by resolution of the Board expressly forbidden to delegate.

(*3*) The exercise or discharge of any powers, duties or functions delegated by the President under this section shall be subject to such restrictions, limitations and conditions, if any, as may be laid down by the President and to the control of, and to revision by, the President.

(*4*) Every order made under sub-section (*2*) shall forthwith be communicated to the Board and to the Officer Commanding the District.

Duties of Vice-President.

23. It shall be the duty of the Vice-President of every Board—

(*a*) in the absence of the President and unless prevented by reasonable cause, to preside at meetings of the Board and when so presiding to exercise the authority of the President under sub-section (*1*) of section 22;

(*b*) during the incapacity or temporary absence of the President or pending his appointment or succession, to perform any other duty and exercise any other power of the President; and

(*c*) to exercise any power and perform any duty of the President which may be delegated to him under sub-section (*2*) of section 22.

Duties of the Executive Officer.

24. The Executive Officer shall perform all the duties imposed upon him by or under this Act and shall be responsible for the custody of all the records of the Cantonment Authority, and shall arrange for the performance of such duties relative to the proceedings of the Board or of any Committee of the Board, or of any Committee of Arbitration constituted under this Act, as those bodies may respectively impose on him, and shall comply with every requisition of the Cantonment Authority on any matter pertaining to the administration of the cantonment.

Special power of the Executive Officer.

25. The Executive Officer may, in cases of emergency, direct the execution of any work or the doing of any act which would ordinarily require the sanction of the Cantonment Authority and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the cantonment fund:

Provided that—

(*a*) he shall not act under this section in contravention of any order of the Cantonment Authority prohibiting the execution of any particular work or the doing of any particular act, and

(*b*) he shall report forthwith the action taken under this section and the reasons therefor to the Cantonment Authority.

Elections.

Electoral rolls.

26. (*1*) Where a Board is to be constituted in any cantonment, the Cantonment Authority shall prepare and publish an electoral roll showing the names of persons qualified to vote at elections to the Board. Such roll shall be prepared, revised and finally published in such manner and on such date in each year as the Local Government may by rule prescribe.

(*2*) Every person whose name appears in the final electoral roll shall, so long as the roll remains in force, be entitled to vote at an election to the Board, and no other person shall be so entitled.

(*3*) When a cantonment has been divided into wards, the electoral roll shall be divided into separate lists for each ward.

(*4*) If a new electoral roll is not published in any year on the date prescribed, the Local Government may direct that the old electoral roll shall continue in operation until the new roll is published.

Qualification of electors.

27. (*1*) The following persons shall, if not otherwise disqualified, be entitled to be enrolled as electors, namely:—

(*a*) every person who in any year has on or before such date as may be fixed by the Local Government in this behalf by notification in the local official Gazette (hereinafter in this section referred to as the aforesaid date) been assessed directly and on his own account to taxes under this Act (other than octroi, toll or terminal tax), the aggregate value whereof is not less than such amount as the Local Government may by rule prescribe, and who on the aforesaid date is not in arrears in the payment of any such tax;

(*b*) every person who has for a period of not less than twelve months immediately preceding the aforesaid date resided in the cantonment and on the aforesaid date—

(*i*) is the owner or the mortgagee in possession or the lessee of any building or land in the cantonment, of an annual value calculated in such manner and of not less than such amount, as the Local Government may by rule prescribe ; or

(*ii*) is carrying on any business in the cantonment from which he derives an annual income calculated in such manner, and of not less than such amount, as the Local Government may by rule prescribe ; or

(*iii*) is a graduate of any University established by law in British India ; or

(*iv*) is a retired or pensioned officer, whether commissioned or non-commissioned, of His Majesty's forces ;

(*c*) every person who has, during a period of not less than twelve months immediately preceding the aforesaid date, resided in the cantonment and has during that period been assessed to income-tax.

(*2*) A person, notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he on the aforesaid date—

(*i*) is not a British subject, or

(*ii*) is less than 21 years of age, or

(*iii*) has been adjudged by a competent Court to be of unsound mind, or

(*iv*) is an undischarged insolvent, or

(*v*) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1898, or has been sentenced by a Criminal Court for any offence under Chapter IXA of the Indian Penal Code: V of 1898. XLV of 1860.

Provided that the Local Government may, by order in writing, remove any disqualification incurred by a person under clause (*v*).

(*3*) If any person having been enrolled as an elector in any electoral roll subsequently becomes subject to any of the disqualifications referred to in clauses (*i*), (*iii*), (*iv*) and (*v*) of subsection (*2*) his name shall be removed from the electoral roll unless, in the case referred to in clause (*v*), the disqualification is removed by the Local Government.

Qualification for being a member of the Board.

28. (*1*) Save as hereinafter provided, every person whose name is entered on the electoral roll of a cantonment shall be qualified for election as a member of the Board in that cantonment.

(*2*) No person shall be qualified for election or nomination as a member of a Board, if he—

(*a*) has been dismissed from Government service and is debarred from re-employment therein, or is a dismissed servant of the Cantonment Authority ;

(*b*) is debarred from practising as a legal practitioner by order of any competent authority ;

(*c*) holds any place of profit in the gift or at the disposal of the Board, or is a stipendiary Magistrate or police officer, or is the servant or employer of a member of the Board ; or

(*d*) is interested in a subsisting contract made with, or in work being done for, the Board except as a shareholder (other than a director) in an incorporated company ; or

(*e*) is disqualified under any other provision of this Act :

Provided that—

(*i*) any of the disqualifications referred to in clauses (*a*) and (*b*) may be removed by an order of the Local Government in this behalf, and

(*ii*) a person shall not be deemed to have any interest in such a contract or work as is referred to in clause (*d*) by reason only of his having a share or interest in—

(*a*) any lease or sale or purchase of immoveable property or any agreement for the same, or

(*b*) any agreement for the loan of money or any security for the payment of money only, or

(*c*) any newspaper in which any advertisement relating to the affairs of the Board is inserted, or

(*d*) the sale to the Board of any articles in which he regularly trades or the purchase from the Board of any articles, to a value in either case not exceeding Rs. 1,500 in the aggregate in any year during the period of the contract or work.

Interpretation.

29. For the purposes of sections 26, 27 and 28—

(*a*) "person" means an individual human being, and

(*b*) a person shall be deemed to pay a tax directly if he pays the tax either himself or through a legally appointed agent.

Joint families, etc.

30. Notwithstanding anything hereinbefore contained, the Local Government may make rules conferring on the manager or representative of an undivided family or of any company or firm or other association or body or on any trustee of any land a right to be enrolled as an elector or to be nominated as a candidate at elections to a Board.

Power to make rules regulating elections.

31. (*1*) The Local Government may, either generally or specially for any cantonment or group of cantonments, make rules consistent with this Act to regulate all or any of the following matters, for the purpose of the holding of elections under this Act, namely :—

(*a*) the division of a cantonment into wards, or of the inhabitants of a cantonment into classes, or both ;

(*b*) the determination of the number of members to be elected by each ward or class of persons ;

(*c*) the method by which the annual value of buildings and lands shall be calculated for the purposes of section 27 ;

(*d*) the preparation, revision and final publication of electoral rolls ;

(*e*) the registration of electors, the nomination of candidates, the time and manner of holding elections and the method by which votes shall be recorded ;

(*f*) the authority by which and the manner in which disputes relating to electoral rolls or arising out of elections shall be decided, and the powers and duties of such authority, and the circumstances in which such authority may declare a casual vacancy to have been created or any candidate to have been elected ;

(*g*) any other matter relating to elections or election disputes in respect of which the Local Government is empowered to make rules under this Chapter or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Local Government, necessary.

(*2*) The power of the Local Government to make rules under this section shall be subject to the condition of the rules being made after previous publication and of their not taking effect until they have been confirmed by the Governor General in Council and published by the Local Government in the local official Gazette.

(3) The Governor General in Council in confirming a rule made under this section may make any alteration therein which appears to him to be necessary.

Members.

Member not to vote on matter in which he is interested.

32. No member of a Board shall vote at a meeting of the Board on any question relating to his own conduct or on any matter, other than a matter affecting generally the inhabitants of the cantonment, which affects his own pecuniary interest or the valuation of any property in respect of which he is directly or indirectly interested, or of any property of or for which he is a manager or agent.

Liability of members.

33. Every member of a Board shall be liable for the loss, waste or misapplication of any money or other property belonging to the Board if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while such member; and a suit for compensation for the same may be instituted against him either by the Board or by the Secretary of State for India in Council.

Removal of members.

34. (1) The Local Government may remove from a Board any member thereof who—

(a) has absented himself for more than three consecutive months from the meetings of the Board and is unable to explain such absence to the satisfaction of the Board; or

(b) is an undischarged insolvent; or

(c) is adjudged by a competent Court to be of unsound mind, or is deaf and dumb or a leper; or

(d) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation or has been ordered to furnish security for his good behaviour under the Code of Criminal Procedure, 1898, or has been sentenced by a Criminal Court for any offence under Chapter IXA of the Indian Penal Code; or V of 1898. XLV of 1860.

(e) is interested in a subsisting contract made with, or in work being done for, the Board in such a manner as to be disqualified under section 28 for election or nomination as a member; or

(f) has knowingly contravened the provisions of section 32; or

(g) being a legal practitioner, acts or appears on behalf of any other person against the Board or against the Secretary of State in Council in any suit or other proceeding relating to land in the cantonment which is vested in His Majesty, or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Board against such person.

(2) The Local Government may remove from a Board any member who, in the opinion of the Local Government, has so flagrantly abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interests.

(3) No member shall be removed from a Board under this section unless he has been given a reasonable opportunity of showing cause against his removal.

Consequences of removal.

35. (1) A member removed under clause (a) of sub-section (1) of section 34 shall, if otherwise qualified, be eligible for re-election or nomination.

(2) A member removed under clause (b) of sub-section (1) of section 34, shall not be eligible for re-election or nomination until he has obtained his discharge.

(3) A member removed under sub-section (2) of section 34 shall not be eligible for re-election or nomination until the expiry of three years from the date of his removal.

(4) A member removed under any other provision of section 34 shall not be eligible for re-election or nomination until he is declared so eligible by the Local Government by notification in the local official Gazette.

Servants.

Disqualification of person as servant of Cantonment Authority.

36. (1) No person who has directly or indirectly by himself or his partner any share or interest in a contract with, by or on behalf of a Cantonment Authority or in any employment under, by or on behalf of a Cantonment Authority, otherwise than as a servant of the Cantonment Authority, shall become or remain a servant of such Cantonment Authority.

(2) A servant of a Cantonment Authority who knowingly acquires or continues to have directly or indirectly by himself or his partner any share or interest in a contract with, by or on behalf of the Cantonment Authority or, in any employment under, by or on behalf of, the Cantonment Authority, otherwise than as a servant of the Cantonment Authority shall be deemed to have committed an offence under section 168 of the Indian Penal Code. XLV of 1860.

(3) Nothing in this section shall apply to any share or interest in any contract with, by or on behalf of, or employment under, by or on behalf of, a Cantonment Authority if the same is a share in a company contracting with, or employed by, or on behalf of, the Cantonment Authority or is a share or interest acquired or retained with the permission of the Officer Commanding the District in any lease or sale to, or purchase by, the Cantonment Authority of land or buildings or in any agreement for the same.

Procedure.

Meetings.

37. (1) Every Board shall ordinarily hold at least one meeting in every month on such day as may be fixed, and of which notice shall be given in such manner as may be provided, by regulations made by the Board under this Chapter.

(2) The President may, whenever he thinks fit, and shall, upon a requisition in writing by not less than one-fourth of the members of the Board, convene a special meeting.

(3) Any meeting may be adjourned until the next or any subsequent day and an adjourned meeting may be further adjourned in like manner.

Business to be transacted.

38. Subject to any regulation made by the Board under this Chapter, any business may be transacted at any meeting:

Provided that no business relating to the imposition, abolition or modification of any tax shall be transacted at a meeting unless notice of the same and of the date fixed therefor has been sent to each member not less than seven days before that date.

Quorum.

39. (1) The quorum necessary for the transaction of business of a meeting of a Board shall be five or one-half of the number of members of the Board actually holding office at the time whichever is the greater number.

(2) If a quorum is not present, the President shall adjourn the meeting and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, and may be transacted at, an adjourned meeting, whether there is a quorum present or not.

Presiding officer.

40. In the absence of both the President and the Vice-President from any meeting, the senior member present who is in the service of Government shall preside.

Minutes.

41. (1) Minute of the proceedings of each meeting shall be recorded in a book and shall be signed by the President before the close of the meeting, and shall, at such times and in such place as may be fixed by the Board, be open to inspection free of charge by any inhabitant of the cantonment.

(2) Copies of the minutes shall, as soon as possible after each meeting, be forwarded for the information of the Officer Commanding the District and the District Magistrate.

Meetings to be public.

42. Every meeting of a Board shall be open to the public unless in any case the President, for reasons to be recorded in the minutes, otherwise directs.

Method of deciding questions.

43. (*1*) All questions coming before a meeting shall be decided by the majority of the votes of the members present and voting.

(*2*) In the case of an equality of votes, the President shall have a second or casting vote.

(*3*) The dissent of any member from any decision of the Board shall, if the member so requests, be entered in the minutes together with a short statement of the grounds for such dissent.

Power to make regulations.

44. (*1*) A Board may make regulations consistent with this Act and with the rules made thereunder to provide for all or any of the following matters, namely :—

(*a*) the time and place of its meetings ;

(*b*) the manner in which notice of the meetings shall be given ;

(*c*) the conduct of proceedings at meetings and the adjournment of meetings ;

(*d*) the custody of the common seal of the Board and the purposes for which it shall be used ; and

(*e*) the appointment of committees for any purpose and the determination of all matters relating to the constitution and procedure of such committees, and the delegation to such committees, subject to any conditions which the Board thinks fit to impose, of any of the powers or duties of the Board under this Act other than a power to make regulations or bye-laws.

(*2*) No regulation made under clause (*e*) of sub-section (*1*) shall take effect until it has been approved by the Local Government.

(*3*) No regulation made under this section shall take effect until it has been published in such manner as the Local Government may direct.

Joint action with other local authority.

45. (*1*) A Cantonment Authority may—

(*a*) join with any other local authority—

(*i*) in appointing a joint committee for any purpose in which they are jointly interested and in appointing a chairman of such committee ;

(*ii*) in delegating to such committee power to frame terms binding on the Cantonment Authority and such other local authority as to the construction and future maintenance of any joint work or to exercise any power which might be exercised by either of the said authorities ; and

(*iii*) in making rules for regulating the proceedings of any such committee relating to the purposes for which it has been appointed ; or

(*b*) with the previous sanction of the Local Government, enter into an agreement with any other local authority regarding the levy of octroi, terminal tax or terminal toll whereby the said tax or toll respectively leviable by the authorities so contracting may be levied together instead of separately within the limits of the aggregate area comprising the areas subject to the control of the said authorities.

(*2*) If any difference of opinion arises between any authorities acting together under this section, the decision thereon of the Local Government or of an officer appointed by the Local Government in this behalf shall be final.

(*3*) When any agreement such as is referred to in clause (*b*) of sub-section (*1*) has been entered into—

(*a*) the other local authority with which the Cantonment Authority has made such agreement shall have the same powers to establish octroi limits and octroi stations and places for the collection of the terminal tax and terminal toll within the cantonment, and shall have the same

power of collecting such tax or toll on animals, vehicles and goods brought within such limits or to such stations or brought to or taken from such places, and the provisions of any enactment in force relating to the levy of such tax or toll by such other local authority shall apply in the same manner, as if the limits, places and stations so established were comprised within the area ordinarily subject to its control ; and

(b) the total of the collection of such tax and toll made in the cantonment and in the area ordinarily subject to the control of such other local authority and the costs thereby incurred shall, subject to the provisions of sub-section (1), be divided between the cantonment fund and the fund subject to the control of such other local authority, in such proportion as may have been determined by the agreement.

Control.

Power of Government to require production of documents.

46. The Governor General in Council or the Local Government may at any time require a Cantonment Authority—

(a) to produce any record, correspondence, plan or other document in its possession or under its control ;

(b) to furnish any return, plan, estimate, statement, account or statistics relating to its proceedings, duties or works ;

(c) to furnish or obtain and furnish any report.

Inspection.

47. The Officer Commanding-in-Chief, the Command, may depute any person in the service of the Government to inspect or examine any department of the office of, or any service or work undertaken by, or thing belonging to, a Cantonment Authority, and to report thereon, and the Cantonment Authority and its officers and servants shall be bound to afford the person so deputed access at all reasonable times to the premises and property of the Cantonment Authority and to all records, accounts and other documents the inspection of which he may consider necessary to enable him to discharge his duties.

Powers of Officer Commanding-in-Chief, the Command.

48. The Officer Commanding-in-Chief, the Command, may, by order in writing,—

(a) call for any book or document in the possession or under the control of the Cantonment Authority ;

(b) require the Cantonment Authority to furnish such statements, accounts, reports and copies of documents relating to its proceedings, duties or works, as he thinks fit.

Power to require execution of work, etc.

49. If, on receipt of any information or report obtained under section 47 or section 48, the Officer Commanding-in-Chief, the Command, is of opinion—

(a) that any duty imposed on a Cantonment Authority by or under this Act has not been performed or has been performed in an imperfect, inefficient or unsuitable manner, or

(b) that adequate financial provision has not been made for the performance of any such duty ;

he may, after consulting the Local Government, direct the Cantonment Authority within such period as he thinks fit, to make arrangements to his satisfaction for the proper performance of the duty, or, as the case may be, to make financial provision to his satisfaction for the performance of the duty :

Provided that, unless in the opinion of the Officer Commanding-in-Chief, the Command, the immediate execution of such order is necessary, he shall, before making any direction under this section, give the Cantonment Authority an opportunity of showing cause why such direction should not be made.

Power to provide for enforcement of direction under section 49.

50. If, within the period fixed by a direction made under section 49, any action the taking of which has been directed under that section has not been duly taken, the Officer Commanding-in-Chief, the Command, may make arrangements for the taking of such action and may direct that all expenses connected therewith shall be defrayed out of the cantonment fund.

Power to override decision of Board.

51. (*1*) If the President dissents from any decision of the Board, he may, for reasons to be recorded in the minutes, by order in writing, direct the suspension of action thereon for any period not exceeding one month and, if he does so, shall forthwith refer the matter to the Officer Commanding-in-Chief, the Command.

(*2*) If the District Magistrate considers any decision of a Cantonment Authority to be prejudicial to the public health, safety or convenience he may, after giving notice in writing of his intention to the Cantonment Authority, refer the matter to the Local Government; and pending the disposal of the reference to the Local Government, no action shall be taken on the decision.

(*3*) If any Magistrate who is a member of a Board, being present at a meeting, dissents from any decision which he considers prejudicial to the public health, safety or convenience, he may, for reasons to be recorded in the minutes and after giving notice in writing of his intention to the President, report the matter to the District Magistrate; and the President shall, on receipt of such notice, direct the suspension of action on the decision for a period sufficient to allow of a communication being made to the District Magistrate and of his taking proceedings as provided by sub-section (*2*).

Power of Officer Commanding-in-Chief, the Command, on reference under section 51 or otherwise.

52. (*1*) The Officer Commanding-in-Chief, the Command, may at any time—

(*a*) direct that any matter or any specific proposal other than one which has been referred to the Local Government under sub-section (*2*) of section 51 be considered or re-considered by the Cantonment Authority; or

(*b*) direct the suspension, for such period as may be stated in the order, of action on any decision of a Cantonment Authority, other than a decision which has been referred to him under sub-section (*1*) of section 51, and thereafter cancel the suspension or direct that the decision shall not be carried into effect or that it shall be carried into effect with such modifications as he may specify.

(*2*) When any decision of a Board has been referred to him under sub-section (*1*) of section 51, the Officer Commanding-in-Chief, the Command, may, by order in writing,—

(*a*) cancel the order given by the President directing the suspension of action; or

(*b*) extend the duration of the order for such period as he thinks fit; or

(*c*) direct that the decision be carried into effect by the Board with such modifications as he may specify.

Powers of Local Government on a reference made under section 51.

53. When any decision of a Cantonment Authority has been referred to the Local Government under sub-section (*2*) of section 51, the Local Government may, after consulting the Officer Commanding-in-Chief, the Command, by order in writing,—

(*a*) direct that no action be taken on the decision; or

(*b*) direct that the decision be carried into effect either without modification or with such modifications as it may specify.

Supersession of Board.

54. (*1*) If, in the opinion of the Local Government, any Board is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under this Act or otherwise by law or exceeds or abuses its powers, the Local Government may, with the previous sanction of the Governor

General in Council, by an order published together with the statement of the reasons therefor in the local official Gazette, declare the Board to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and supersede it for such period as may be specified in the order.

(2) When a Board is superseded by an order under sub-section (1)—

(a) all members of the Board shall, on such date as may be specified in the order, vacate their offices as such members but without prejudice to their eligibility for election or nomination under clause (c);

(b) during the supersession of the Board, all powers and duties conferred and imposed upon the Board by or under this Act or otherwise by law shall be exercised and performed by the Commanding Officer of the cantonment subject to such reservation, if any, as the Local Government may prescribe in this behalf; and

(c) before the expiry of the period of supersession elections shall be held and nominations made for the purpose of reconstituting the Board.

Validity of Proceedings.

Validity of Proceedings, etc.

55. (1) No act or proceeding of a Board or of any committee of a Board shall be invalid by reason only of the existence of a vacancy in the Board or committee.

(2) No disqualification or defect in the election, nomination or appointment of a person acting as the President or a member of a Board or of any such committee shall vitiate any act or proceeding of the Board or committee if the majority of the persons present at the time of the act being done or the proceeding being taken were duly qualified members thereof.

(3) Any document or minutes which purport to be the record of the proceedings of a Board or of any committee of a Board shall, if made and signed substantially in the manner prescribed for the making and signing of the record of such proceedings, be presumed to be a correct record of the proceedings of a duly convened meeting, held by a duly constituted Board or committee, as the case may be, whereof all the members were duly qualified.

CHAPTER IV.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

Unauthorised sale of spirituous liquor or intoxicating drug.

56. If within a cantonment, or within such limits adjoining a cantonment as the Local Government may, by notification in the local official Gazette, define, any person not subject to military or air-force law or any person subject to military or air-force law otherwise than as a military officer or a soldier knowingly barters, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor or intoxicating drug to or for the use of any soldier or follower or soldier's wife, without the written permission of Commanding Officer of the cantonment or of some person authorised by the Commanding Officer of the cantonment to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Unauthorised possession of spirituous liquor.

57. If within a cantonment, or within any limits defined under section 56,—

(a) any person subject to military or air-force law otherwise than as a military officer or a soldier, or

(b) the wife or servant of any such person or of a soldier,

has in his or her possession, except on behalf of the Government or for the private use of a military officer, more than one quart of any spirituous liquor, other than fermented malt-liquor, without the written permission of the Commanding Officer of the cantonment or of some person authorised by the

Commanding Officer of the cantonment to grant such permission, he or she shall be punishable, in the case of a first offence, with fine which may extend to fifty rupees, and, in the case of a subsequent offence, with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees.

Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

58. (*1*) Any police officer or excise officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence under section 56 or section 57, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed, and any vessels or coverings in which the liquor or drug is contained.

(*2*) Where a person accused of an offence under section 56 has been previously convicted of an offence under that section, an officer in charge of a police station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment or within any limits defined under that section which, at the time of the alleged commission of the subsequent offence, belonged to, or was in the possession of, such person.

(*3*) The Court convicting a person of an offence under section 56 or section 57 may order the confiscation of the whole or any part of anything seized under sub-section (*1*) or sub-section (*2*).

(*4*) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898, anything seized under sub-section V of 1898.
(*1*) or sub-section (*2*) and not confiscated under sub-section (*3*) shall be restored to the person from whom it was taken.

Saving of articles sold or supplied for medicinal purposes.

59. The foregoing provisions of this Chapter shall not apply to the sale or supply of any article in good faith for medicinal purposes by a medical practitioner, chemist or druggist authorized in this behalf by a general or special order of the Commanding Officer of the cantonment.

CHAPTER V.

TAXATION.

Imposition of Taxation.

General power of taxation.

60. The Local Government may, by notification in the local official Gazette, impose in any cantonment any tax which under any enactment in force on the date of the notification, may be imposed in any municipality within the province.

Extension of Act XX of 1856 to certain cantonments.

61. (*1*) The Local Government may, by notification in the local official Gazette, extend the provisions of the Bengal Chaukidari Act, 1856, to any cantonment which is not included XX of 1856.
in a municipality and which is situated in any part of British India in which that Act is in force, and the Executive Officer of any cantonment to which that Act is so extended may exercise all the powers of the Magistrate thereunder subject only to the control of the District Magistrate and the Local Government.

(*2*) The Local Government may order that a cantonment to which the provisions of the Bengal Chaukidari Act, 1856, have XX of 1856.
been extended shall be divided into any number of cantonment divisions and may determine the nature of the tax to be levied in each such division according to section 10 of that Act.

(*3*) While a tax assessed according to the circumstances, and the property to be protected, of the persons liable thereto, or according to the annual value of houses and grounds, is levied under the Bengal Chaukidari Act, 1856, in a cantonment, a tax XX of 1856.
on persons practising any profession or art or carrying on any trade or calling or a tax on buildings or lands shall not be leviable in the cantonment in pursuance of a notification under section 60 of this Act.

Framing of preliminary proposals.

62. (*1*) When the Local Government proposes to impose any tax under section 60, it shall, by notification in the local official Gazette, give notice of its intention.

(*2*) Every notification issued under sub-section (*1*) shall specify—

(*a*) the tax which it is proposed to impose;
(*b*) the persons or classes of persons to be made liable and the description of the property or other taxable thing or circumstance in respect of which they are to be made liable; and
(*c*) the rate at which the tax is to be levied.

Procedure subsequent to framing proposals.

63. (*1*) Any inhabitant of the cantonment may, within fifteen days from the date of the notification under section 62, submit to the local Government an objection in writing to all or any of the proposals framed therein, and the Local Government shall take any objection so submitted into consideration.

(*2*) After the expiry of fifteen days from the date of the notification and after considering all objections submitted thereto under sub-section (*1*), the Local Government may impose the tax either in the original form or, if any such objection has been so submitted, in that form or in such modified form as it thinks fit.

Definition of annual value.

64. For the purposes of this Chapter, "annual value" means—

(*a*) in the case of railway stations, hotels, colleges, schools hospitals, factories and other such buildings, one-twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto, and
(*b*) in the case of a building or land not provided for in clause (*a*), the gross annual rent for which such building (exclusive of furniture or machinery therein) or such land is actually let, or where the building or land is not let or in the opinion of the Cantonment Authority is let for a sum less than its fair letting value, might reasonably be expected to let from year to year:

Provided that, where the annual value of any building is, by reason of exceptional circumstances, in the opinion of the Cantonment Authority, excessive if calculated in the aforesaid manner, the Cantonment Authority may fix the annual value at any less amount which appears to it to be just.

Incidence of taxation.

65. (*1*) Save as otherwise expressly provided in the notification imposing the tax, every tax on the annual value of buildings or lands or of both shall be leviable primarily upon the actual occupier of the property upon which the said tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Secretary of State in Council or from the Cantonment Authority or on a building lease from any person.

(*2*) In any other case, the tax shall be primarily leviable as follows, namely:—

(*a*) if the property is let, upon the lessor;
(*b*) if the property is sub-let, upon the superior lessor;
(*c*) if the property is unlet, upon the person in whom the right to let the same vests.

(*3*) On failure to recover any sum due on account of such tax from the person primarily liable, there may be recovered from the occupier of any part of the buildings or lands in respect of which the tax is due such portion of the sum due as bears to the whole amount due the same ratio which the rent annually payable by such occupier bears to the aggregate amount of rent so payable in respect of the whole of the said buildings or lands, or to the aggregate amount of the letting value thereof, if any, stated in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under this section shall, in the absence of any contract to the contrary, be entitled to be re-imbursed by the person primarily liable for the payment.

Assessment List.

Assessment list.

66. When a tax on the annual value of buildings or lands or both is imposed, the Cantonment Authority shall cause an assessment list of all buildings or lands in the cantonment, or of both, as the case may be, to be prepared in such form as the Governor General in Council may by rule prescribe.

Publication of assessment list.

67. When the assessment list has been prepared, the Cantonment Authority shall give public notice thereof, and of the place where the list or a copy thereof may be inspected, and every person claiming to be the owner, lessee or occupier of any property included in the list, and any authorized agent of such person, shall be at liberty to inspect the list and to make extracts therefrom free of charge.

Revision of assessment list.

68. (1) The Cantonment Authority shall, at the same time, give public notice of a date, not less than one month thereafter, when it will proceed to consider the valuations and assessments entered in the assessment list, and, in all cases in which any property is for the first time assessed or the assessment is increased, it shall also give notice thereof to the owner and to any lessee or occupier of the property.

(2) Any objection to a valuation or assessment shall be made in writing to the Cantonment Authority before the date fixed in the notice, and shall state in what respect the valuation or assessment is disputed, and all objections so made shall be recorded in a register to be kept for the purpose by the Cantonment Authority.

(3) The objections shall be inquired into and investigated, and the person making them shall be allowed an opportunity of being heard either in person or by authorized agent, by an Assessment Committee appointed by the Cantonment Authority.

(4) The Assessment Committee shall consist of not less than three persons, and, where there is a Board, it shall not be necessary to appoint to the Assessment Committee any member thereof.

Authentication of assessment list.

69. (1) When all objections made under section 68 have been disposed of, and the revision of the valuation and assessment has been completed, the assessment list shall be authenticated by the signature of the members of the Assessment Committee who shall, at the same time, certify that they have considered all objections duly made and have amended the list so far as is required by their decisions on such objections.

(2) The assessment list so authenticated shall be deposited in the office of the Cantonment Authority and shall there be open, free of charge, during office hours to all owners, lessees and occupiers of property comprised therein or the authorised agents of such persons, and a public notice that it is so open shall forthwith be published.

Evidential value of assessment list.

70. Subject to such alterations as may thereafter be made in the assessment list under the provisions of this Chapter and to the result of any appeal made thereunder, the entries in the assessment list authenticated and deposited as provided in section 69 shall be accepted as conclusive evidence—

(i) for the purpose of assessing any tax imposed under this Act, of the annual value or other valuation of all buildings and lands to which such entries respectively refer, and

(ii) for the purposes of any tax imposed on buildings or lands, of the amount of each such tax leviable thereon during the year to which such list relates.

Amendment of assessment list.

71. (1) The Cantonment Authority may, at any time, amend the assessment list by inserting the name of any person whose name ought to have been or ought to be inserted, or by

inserting any property which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Cantonment Authority or of the Assessment Committee or of the assessee, or, in the case of a tax payable by an occupier, by a change in the tenancy, after giving notice to any person affected by the amendment of a time, not less than one month from the date of service, at which the amendment is to be made.

(2) Any person interested in any such amendment may tender an objection to the Cantonment Authority in writing before the time fixed in the notice, and shall be allowed an opportunity of being heard in support of the same in person or by authorised agent.

Preparation of new assessment list.

72. The Cantonment Authority shall prepare a new assessment list every year, and for this purpose the provisions of sections 66 to 71 shall apply in like manner as they apply for the purpose of the preparation of an assessment list for the first time.

Notice of transfers.

73. (1) Whenever the title of any person primarily liable for the payment of a tax on the annual value of any building or land to or over such building or land is transferred, the person whose title is transferred and the person to whom the same is transferred shall, within three months after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer to the Executive Officer.

(2) In the event of the death of any person primarily liable as aforesaid, the person on whom the title of the deceased devolves shall give notice of such devolution to the Executive Officer within six months from the death of the deceased.

(3) The notice to be given under this section shall be in such form as the Executive Officer may direct and the transferee or other person or whom the title devolves shall, if so required, be bound to produce before the Executive Officer any documents evidencing the transfer or devolution.

(4) Every person who makes a transfer as aforesaid without giving such notice to the Executive Officer shall continue liable for the payment of all taxes assessed on the property transferred until he gives notice or until the transfer has been recorded in the registers of the Cantonment Authority, but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax.

Notice of erection of buildings.

74. (1) If any building is erected or re-erected within the meaning of section 179, the owner shall give notice thereof to the Executive Officer within thirty days from the date of its completion or occupation whichever is earlier.

(2) Any person failing to give the notice required by sub-section (1), shall be punishable with fine which may extend to fifty rupees or ten times the amount of the tax payable on the said building, as erected or re-erected, as the case may be, in respect of a period of three months, whichever is greater.

Remission and Refund.

Demolition, etc., of buildings.

75. If any building is wholly or partly demolished or destroyed or otherwise deprived of value, the Cantonment Authority may, on the application of the owner, remit or refund such portion of the tax as it thinks fit.

Remission of tax.

76. In a cantonment other than a hill cantonment, when any building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year, the Cantonment Authority shall remit or refund, as the case may be, such portion of the tax in respect of that year as may be proportionate to the number of days during which the said building or land has remained vacant and unproductive of rent,

Power to require entry in assessment list of details of building.

77. For the purpose of obtaining a partial remission or refund of tax, the owner of a building composed of separate tenements may request the Cantonment Authority, at the time of the assessment of the building, to enter in the assessment list, in addition to the annual value of the whole building, a note recording in detail the annual value of each separate tenement. When any tenement, the annual value of which has been thus separately recorded, has remained vacant and unproductive of rent for ninety or more consecutive days during any year, such portion of the tax in respect of that year on the whole building shall be remitted or refunded as would have been remitted or refunded if the tenement had been separately assessed :

Provided that no such remission shall be made unless notice in writing of the circumstances in which it is claimed has been given to the Cantonment Authority, and no remission or refund shall take effect in respect of any period commencing more than fifteen days before the delivery of such notice.

What buildings, etc., are to be deemed vacant.

78. (*1*) For the purposes of sections 76 and 77 no building, tenement or land shall be deemed vacant if maintained as a pleasure resort of town or country house, or be deemed unproductive of rent if let to a tenant who has a continuing right of occupation thereof, whether he is in actual occupation or not.

(*2*) The burden of proving all facts entitling any person to claim relief under section 75, or section 76, or section 77 shall be upon him.

Notice to be given of every occupation of vacant building or house.

79. (*1*) The owner of any building, tenement or land in respect of which a remission or refund of tax has been given under section 76 or section 77 shall give notice of the re-occupation of such building or land within fifteen days of such re-occupation.

(*2*) Any owner failing to give the notice required by sub-section (*1*) shall be punishable with fine which shall not be less than twice the amount of the tax payable on such building, tenement or land in respect of the period during which it has been re-occupied and which may extend to fifty rupees or to ten times the amount of the said tax, whichever sum is greater.

Charge on Immoveable Property.

Tax on buildings and land to be a charge thereon.

80. A tax assessed on the annual value of any building or land shall, subject to the prior payment of the land revenue, if any, due to the Government thereon, be a first charge upon the building or land.

Octroi, Terminal Tax and Toll.

Inspection of imported goods, etc.

81. Every person bringing or receiving any goods, vehicles or animals within the limits of any cantonment in which octroi or terminal tax or toll is leviable, shall, when so required by an officer duly authorized by the Cantonment Authority in this behalf, so far as may be necessary for ascertaining the amount of tax chargeable,—

(*a*) permit that officer to inspect, examine or weigh such goods, vehicles or animals ; and

(*b*) communicate to that officer any information, and exhibit to him any bill, invoice or document of a like nature, which such person may possess relating to such goods, vehicles or animals.

Evasion of octroi or terminal tax.

82. (*1*) A person introducing or attempting to introduce within the limits of a cantonment or abetting the introduction therein, of any goods, vehicles or animals, for which the octroi, terminal tax or toll leviable has neither been paid nor tendered, shall be punishable with fine which may extend either to ten times the value of such octroi, terminal tax or toll, or to fifty rupees, whichever is greater, and which shall not be less than twice the value of such octroi, terminal tax or toll, as the case may be.

(2) In case of non-payment of any octroi or terminal tax or toll on demand the officer empowered to collect the same may seize any goods, vehicles or animals on which the octroi, terminal tax or toll is chargeable or any part or number thereof which is of sufficient value to satisfy the demand.

(3) The Cantonment Authority, after the lapse of five days from the seizure, and after the issue of a notice in writing to the person in whose possession the goods, vehicles or animals were at the time of seizure, fixing the time and place of sale, may cause the property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand and any expenses occasioned by the seizure, custody and sale thereof, unless the demand and expenses are in the meantime paid :

Provided that the Executive Officer may, in any case, order that any article of a perishable nature which cannot be kept for five days without serious risk of damage, or which cannot be kept save at a cost which together with the amount of octroi, terminal tax or toll is likely to exceed its value, shall be sold after the lapse of such shorter time as he may, having regard to the nature of the article, think proper.

(4) If at any time before the sale has begun, the person whose property has been seized tenders to the Executive Officer the amount of all expenses incurred and of the octroi, terminal tax or toll, the Executive Officer shall release the property seized.

(5) The surplus, if any, of the sale proceeds shall be credited to the cantonment fund, and shall, on application made to the Cantonment Authority within one year after the sale, be paid to the person in whose possession the property was at the time of seizure, and, if no such application is made, shall be the property of the Cantonment Authority.

Lease of octroi terminal tax or toll.

83. It shall be lawful for the Cantonment Authority, with the previous sanction of the Officer Commanding-in-Chief, the Command, to lease the collection of any octroi, terminal tax or toll for any period not exceeding one year; and the lessee and all persons employed by him in the management and collection of the octroi, terminal tax or toll shall, in respect thereof,—

(a) be bound by any orders made by the Cantonment Authority for their guidance ;

(b) have such power exerciseable by officers or servants of the Cantonment Authority under this Act as the Cantonment Authority may confer upon them ; and

(c) be entitled to the same remedies and be subject to the same responsibilities as if they were employed by the Cantonment Authority for the management and collection of the octroi, terminal tax or toll, as the case may be :

Provided that no article distrained may be sold except under the orders of the Cantonmont Authority.

Appeals.

Appeals against assessment.

84. (1) An appeal against the assessment or levy of, or against the refusal to refund, any tax under this Act shall lie to the District Magistrate or to such other officer as may be empowered by the Local Government in this behalf :

Provided that, where there is a Board and the person to whom the appeal would ordinarily lie is, or was when the tax was imposed, a member of the Board, the appeal shall lie to the Commissioner of the Division, or in a province where there are no Commissioners, to the District Judge.

(2) If, on the hearing of an appeal under this section, any question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of the appellant, draw up a statement of the facts of the case and the point on which doubt is entertained and refer the statement with his own opinion on the point for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be as nearly as may be

in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule to the Code of Civil Procedue, 1908. V of 1908.

Costs of appeal.

85. In every appeal the costs shall be in the discretion of the officer hearing the appeal.

Recovery of costs from Cantonment Authority.

86. If the Cantonment Authority fails to pay any costs awarded to any appellant within ten days after the date of the order for payment thereof, the officer awarding the costs may order the person having the custody of the balance of the cantonment fund to pay the amount.

Conditions of right to appeal.

87. No appeal shall be heard or determined under this Chapter unless—

(*a*) the appeal is, in the case of a tax assessed on the annual value of buildings or lands or both, brought within thirty days next after the date of the authentication of the assessment list under section 69 (exclusive of the time requisite for obtaining a copy of the relevant entries therein, or, as the case may be, within thirty days of the date on which an amendment is finally made under section 71, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days next after the date of the presentation of the first bill in respect thereof :

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the Court before whom the appeal is preferred that he had sufficient cause for not preferring it within that period ;

(*b*) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Cantonment Authority.

Finality of appellate orders.

88. The order of an appellate authority confirming, setting aside or modifying an order in respect of any valuation or assessment or liability to assessment or taxation shall be final :

Provided that it shall be lawful for the appellate authority, upon application or on its own motion, to review any order passed by it in appeal if application in this behalf is made within three months from the date of the original order.

Payment and Recovery of Taxes.

Time and manner of payment of taxes.

89. Save as otherwise expressly provided under this Act any tax imposed under the provisions of this Act shall be payable on such dates and in such instalments, if any, as the Cantonment Authority may, by public notice, direct.

Presentation of bill.

90. (*1*) When any tax has become due, the Executive Officer shall cause to be presented to the person liable for the payment thereof a bill for the amount due.

(*2*) Every such bill shall specify the particulars of the tax and the period for which the charge is made.

Notice of demand.

91. (*1*) If the amount of the tax for which any bill has been presented is not paid to the Cantonment Authority within fifteen days from the presentation thereof, the Executive Officer may cause to be served upon the person liable for the payment of the same a notice of demand in the form set forth in Schedule I.

(*2*) For every notice of demand which the Executive Officer causes to be served on any person under this section, a fee of such amount, not exceeding one rupee, as shall in each case be fixed by the Executive Officer shall be payable by the said person and shall be included in the costs of recovery.

Recovery of tax.

92. (*1*) If the person liable for the payment of any tax does not, within fifteen days from the service of the notice of demand, pay the amount due, or show sufficient cause for non-payment of the same to the satisfaction of the Executive Officer, such sum, with all costs of recovery, may be recovered under a warrant, issued in the form set forth in Schedule II, by distress and sale of the moveable property of the defaulter :

Provided that the Executive Officer shall not recover any sum the liability for which has been remitted on appeal under this Chapter.

(*2*) Every warrant issued under this section shall be signed by the Executive Officer.

Distress.

93. (*1*) It shall be lawful for any servant of the Cantonment Authority to whom a warrant issued under section 92 is addressed to distrain, wherever it may be found, any moveable property of the person therein named as defaulter, subject to the following conditions, exceptions and exemptions, namely :—

(*a*) the following property shall not be distrained :—

(*i*) the necessary wearing apparel and bedding of the defaulter, his wife and children,

(*ii*) tools of artisans,

(*iii*) books of account, or

(*iv*) when the defaulter is an agriculturist his implements of husbandry, seed-grain, and such cattle as may be necessary to enable the defaulter to earn his livelihood ;

(*b*) the distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any property has been distrained which, in the opinion of the Executive Officer, should not have been distrained, it shall forthwith be returned.

(*2*) The person charged with the execution of a warrant of distress shall forthwith make an inventory of the property which he seizes under such warrant, and shall, at the same time, give a written notice in the form set forth in Schedule III to the person in possession thereof at the time of seizure that the said property will be sold as therein mentioned.

Disposal of distrained property.

94. (*1*) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is, when added to the amount to be recovered, likely to exceeds its value, the Executive Officer shall give notice to the person in whose possession the property was at the time of seizure that it will be sold at once and shall sell it accordingly unless the amount mentioned in the warrant is forthwith paid.

(*2*) If the warrant is not in the meantime suspended by the Executive Officer, or discharged, the property seized shall, after the expiry of the period named in the notice served under sub-section (*2*) of section 93, be sold by order of the Executive Officer.

(*3*) The surplus of the sale proceeds, if any, shall forthwith be credited to the cantonment fund, and notice of such credit shall be given at the same time to the person from whose possession the property was taken, and, if the same be claimed by written application to the Cantonment Authority within one year from the date of the notice, a refund thereof shall be made to such person. Any surplus not claimed within one year as aforesaid shall be the property of the Cantonment Authority.

(*4*) For every distraint made under this Chapter, a fee of such amount, not exceeding one rupee, as shall in each case be fixed by the Executive Officer shall be charged, and the said fee shall be included in the costs of recovery.

Recovery from a person about to leave cantonment.

95. (*1*) If the Executive Officer has reason to believe that any person from whom any sum is due on account of any tax is about to remove from the cantonment, he may direct the immediate payment by such person of the sum so due or about to become due and cause a bill for the same to be served on such person.

(2) If, on the service of such bill, such person does not forthwith pay the sum so due or about to become due, the amount shall be leviable by distress and sale in the manner hereinbefore provided in this Chapter, except that it shall not be necessary to serve upon the defaulter any notice of demand and the warrant for distress and sale may be issued and executed without any delay.

Power to institute suit for recovery.

96. Instead of proceeding against a defaulter by distress and sale as hereinbefore provided in this Chapter, or after a defaulter has been so proceeded against unsuccessfully or with only partial success, any sum due or the balance of any sum due, as the case may be, from such defaulter on account of a tax may be recovered from him by a suit in any Court of competent jurisdiction.

Special Provisions relating to Taxation.

Power to prohibit or exempt from taxation.

97. Every Cantonment Authority shall be deemed to be a Municipal Committee for the purposes of sections 3 and 4 of the Municipal Taxation Act, 1881. XI of 1881.

Power to make special provision for conservancy in certain cases.

98. A Cantonment Authority may make special provision for the cleansing of any factory, hotel, club or group of buildings or lands used for any one purpose and under one management, and may fix a special rate and the dates and other conditions for periodical payment thereof, which shall be determined by a written agreement with the person liable for the payment of the conservancy or scavenging tax in respect of such factory, hotel, club or group of buildings or lands :

Provided that, in fixing the amount, proper regard shall be had to the probable cost to the Cantonment Authority of the services to be rendered.

Exemption from ordinary tax when provision made under section 98.

99. When, in pursuance of section 98, a Cantonment Authority has fixed a special rate for the cleansing of any factory, hotel, club or group of buildings or lands, such premises shall be exempted from the payment of any conservancy or scavenging tax imposed in the cantonment.

Exemption of poor persons.

100. A Cantonment Authority may exempt for a period not exceeding one year at a time from the payment of any tax or any portion of a tax imposed under this Act any person who is in its opinion by reason of poverty unable to pay the same.

Composition.

101. (1) A Cantonment Authority may, with the previous sanction of the Officer Commanding-in-Chief, the Command, allow any person to compound for any tax.

(2) Every sum due by reason of the composition of a tax under sub-section (1) shall be recoverable as if it were a tax.

Irrecoverable debts.

102. A Cantonment Authority may write off any sum due on account of any tax or of the costs of recovering any tax if such sum is, in its opinion, irrecoverable.

Obligation to disclose liability.

103. (1) The Executive Officer may, by written communication, call upon any inhabitant of the cantonment to furnish such information as may be necessary for the purpose of ascertaining—

(a) whether such inhabitant is liable to pay any tax imposed under this Act ;

(b) at what amount he should be assessed ;

(c) the annual value of the building or land which he occupies and the name and address of the owner or lessee thereof.

(2) If any person, when called upon under sub-section (1) to furnish information, omits to furnish it or furnishes information which is not true to the best of his knowledge or belief, he shall be punishable with fine which may extend to one hundred rupees.

Immaterial error not to effect liability.

104. No assessment and no charge or demand on account of any tax or fee shall be impeached or affected by reason only of any mistake in the name of any person liable to pay such tax or fee, or in the description of any property or thing, or any mistake in the amount of the assessment, charge or demand, if the directions contained in this Act and the rules and bye-laws made thereunder have in substance and effect been complied with; but any person who sustains any special damage by reason of any such mistake shall be entitled to recover compensation for the same by suit in a Court of competent jurisdiction.

Distraint not to be invalid by reason of immaterial defect.

105. No distress levied under this Chapter shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account only of any defect of form in the notice of demand, warrant of distress or other proceeding relating thereto; nor shall any such person be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but any person who sustains any special damage by reason of any such irregularity shall be entitled to recover compensation for the same by suit in a Court of competent jurisdiction.

CHAPTER VI.

CANTONMENT FUND AND PROPERTY.

Cantonment Fund.

Cantonment fund.

106. There shall be formed for every cantonment a cantonment fund, and there shall be placed to the credit thereof the following sums, namely:—

(*a*) all sums received by or on behalf of the Cantoment Authority, and

(*b*) subject to any deductions made under section 545 of the Code of Criminal Procedure, 1898, or under any other law for the time being in force, or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment— V of 1898.

(*i*) under this Act or any rule or bye-law made thereunder or

(*ii*) under section 34 of the Police Act, 1861 or under any corresponding enactment for the time being in force, or V of 1861.

(*iii*) under Chapter XIII or Chapter XIV of the Indian Penal Code, or XLV of 1860.

(*iv*) under section 156 of the Army Act, or 44 and 45 Vict., c 8.

(*v*) under the provisions of any enactment wherein or whereunder provision is made for a fine being credited to the cantonment fund, or

(*vi*) under any other enactment for the time being in force in respect of which the Governor General in Council may, by general or special order, direct that fines realised thereunder shall be credited to the cantonment fund.

Custody of cantonment fund.

107. (*1*) Where in or near a cantonment there is a Government treasury, or sub-treasury, or a branch or the Imperial Bank of India, the cantonment fund shall be kept in such treasury, sub-treasury or bank, as the case may be.

(*2*) Where there is no such treasury, sub-treasury or bank, the cantonment fund may be deposited with any bank to which the Government treasury business has been entrusted, and, in the absence of such a bank, with any banker or person acting as a banker who has given such security for the safe custody of the fund and the payment on demand of the fund so kept as the Local Government may in each case direct.

(*3*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*2*), a Cantonment Authority may, with the previous sanction of the Local Government, place in fixed deposit with the Imperial Bank of India any surplus funds in

its hands which may not be required for immediate use, or may invest the same in securities of the Government of India or a Local Government or in such other securities as the Local Government may approve in this behalf, and may vary such investments for others of a like nature and may dispose of such securities as may be necessary.

(4) The income resulting from any fixed deposit or from any such security as is referred to in sub-section (3) or from the proceeds of the sale of any such security shall be credited to the cantonment fund.

Property.

Property.

108. Subject to any special reservation made by the Governor General in Council or the Local Government, all property of the nature hereinafter in this section specified which has been acquired or provided or is maintained by a Cantonment Authority, shall vest in and belong to that Cantonment Authority, and shall be under its direction, management and control, that is to say,—

(a) all markets, slaughter-houses, manure and nightsoil depôts, and buildings of every description ;

(b) all water-works for the supply, storage or distribution of water for public purposes, and all bridges, buildings, engines, materials, and things connected therewith or appertaining thereto ;

(c) all sewers, drains, culverts and water-courses, and all works, materials and things appertaining thereto ;

(d) all dust, dirt, dung, ashes, refuse, animal matter, filth and rubbish of every kind, and dead bodies of animals, collected by the Cantonment Authority from the streets, houses, privies, sewers, cesspools or elsewhere, or deposited in places appointed by the Cantonment Authority for such purpose ;

(e) all lamps and lamp-posts and apparatus connected therewith or appertaining thereto ;

(f) all land or other property transferred to the Cantonment Authority by His Majesty, or by gift, purchase or otherwise for local public purposes ; and

(g) all streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements, and things existing on or appertaining to streets.

Application of cantonment fund and property.

109. The cantonment fund and all property vested in a Cantonment Authority shall be applied for the purposes, whether express or implied, for which, by or under this Act or any other law for the time being in force, powers are conferred or duties or obligations are imposed upon the Cantonment Authority :

Provided that the Cantonment Authority shall not incur any expenditure for acquiring or renting land beyond the limits of the cantonment or for constructing any work beyond such limits, except—

(a) with the sanction of the Local Government, and

(b) on such terms and conditions as the Local Government may impose :

Provided, further, that priority shall be given in the order hereinafter set forth to the following liabilities and obligations of a Cantonment Authority, that is to say,—

(a) to the liabilities and obligations arising from a trust legally imposed upon or accepted by the Cantonment Authority ;

(b) to the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914 ; IX of 1914.

(c) to the payment of establishment charges ; and

(d) to the payment of any sum the payment of which is expressly required by the provisions of this Act or any rule or bye-law made thereunder.

Acquisition of immoveable property.

110. When there is any hindrance to the permanent or temporary acquisition upon payment of any land required by a Cantonment Authority for the purposes of this Act, the Local Government may, at the request of the Cantonment Authority, proceed to acquire it under the provisions of the Land Acquisition Act, 1894, and on payment by the Cantonment Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Cantonment Authority. I of 1894

Power to make rules regarding cantonment fund and property.

111. The Governor General in Council may make rules consistent with this Act to privide for all or any of the following matters, namely :—

(*a*) the conditions on which property may be acquired by Cantonment Authorities or on which property vested in a Cantonment Authority may be transferred by sale, mortgage, lease, exchange or otherwise ; and

(*b*) any other matter relating to the cantonment fund or cantonment property in respect of which no provision or insufficient provision is made by or under this Act and provision is, in the opinion of the Governor General in Council, necessary.

CHAPTER VII.

CONTRACTS.

Contracts by whom to be executed.

112. Subject to the provisions of this Chapter, every Cantonment Authority shall be competent to enter into and perform any contract necessary for the purposes of this Act.

Sanction.

113. (*1*) No lease or other contract which is to remain in operation for more than twelve months shall be executed by or on behalf of a Cantonment Authority without the previous sanction of the Officer Commanding the District.

(*2*) Every contract—

(*a*) for which budget provision does not exist, or

(*b*) which involves a value or amount exceeding one hundred rupees,

shall require the sanction of the Cantonment Authority.

(*3*) Every contract other than a contract such as is referred to in sub-section (*1*) or sub-section (*2*) shall be sanctioned by the Cantonment Authority or by the Executive Officer on behalf of the Cantonment Authority.

Execution of contracts.

114. (*1*) Every contract made by or on behalf of a Cantonment Authority, the value or amount of which exceeds fifty rupees, shall be in writing and every such contract shall, where there is a Board, be signed by two members, of whom the President or the Vice-President shall be one, and be countersigned by the Executive Officer and be sealed with the common seal of the Board, or, where there is no Board, be signed by the Commanding Officer of the cantonment and be sealed with the official seal of the Cantonment Authority :

Provided that where there is a Board, the Executive Officer may in a case of urgency, with the previous sanction of the President of the Board, execute on behalf of the Board any contract the value or amount of which does not exceed two hundred rupees.

(*2*) Where an Executive Officer executes a contract on behalf of a Board under sub-section (*1*), he shall submit a report of his action and of the reasons therefor to the Board at its next meeting.

Contracts improperly executed not to be binding on a Cantonment Authority.

115. If any contract is executed by or on behalf of a Cantonment Authority otherwise than in conformity with the provisions of this Chapter, it shall not be binding on the Cantonment Authority.

CHAPTER VIII.

DUTIES AND DISCRETIONARY FUNCTIONS OF CANTONMENT AUTHORITIES.

Duties of Cantonment Authority.

116. It shall be the duty of every Cantonment Authority so far as the funds at its disposal permit to make reasonable provisions within the cantonment for—

(*a*) lighting streets and other public places ;

(*b*) watering streets and other public places ;

(*c*) cleansing streets, public places and drains, abating nuisances and removing noxious vegetation ;

(*d*) regulating offensive, dangerous or obnoxious trades, callings and practices ;

(*e*) removing, on the ground of public safety, health or convenience, undesirable obstruction and projections in streets and other public places ;

(*f*) securing or removing dangerous buildings and places ;

(*g*) acquiring, maintaining, changing and regulating places for the disposal of the dead ;

(*h*) constructing, altering and maintaining streets, culverts, markets, slaughter-houses, latrines, privies, urinals, drains, drainage works and sewerage works ;

(*i*) planting and maintaining streets on roadsides and other public places ;

(*j*) providing or arranging for a sufficient supply of pure and wholesome water, guarding from pollution water used for human consumption, and preventing polluted water from being so used ;

(*k*) registering births and deaths ;

(*l*) establishing and maintaining a system of public vaccination ;

(*m*) establishing, and maintaining or supporting, public hospitals and dispensaries, and providing public medical relief ;

(*n*) establishing and maintaining primary schools ;

(*o*) rendering assistance in extinguishing fires, and protecting life and property when fires occur ;

(*p*) maintaining and developing the value of property vested in or entrusted to the management of the Cantonment Authority ; and

(*q*) fulfilling any other obligation imposed upon it by or under this Act or any other law for the time being in force.

Discretionary functions of Cantonment Authority.

117. A Cantonment Authority may, within the cantonment, make provision for—

(*a*) laying out in areas, whether previously built upon or not, new streets, and acquiring land for that purpose and for the construction of buildings, and compounds of buildings, to abut on such streets ;

(*b*) constructing, establishing or maintaining public parks, gardens, offices, dairies, bathing or washing places ; drinking fountains, tanks, wells and other works of public utility ;

(*c*) reclaiming unhealthy localities ;

(*d*) furthering educational objects by measures other than the establishment and maintenance of primary schools ;

(*e*) taking a census and granting rewards for information which may tend to secure the correct registration of vital statistics ;

(*f*) making a survey ;

(*g*) giving relief on the occurrence of local epidemics by the establishment or maintenance of relief works or otherwise ;

(*h*) securing or assisting to secure suitable places for the carrying on of any offensive, dangerous or obnoxious trade, calling or occupation ;

(*i*) establishing and maintaining a farm or other place for the disposal of sewage ;

(*j*) constructing, subsidising or guaranteeing tramways or other means of locomotion, and electric lighting or electric power works ;

(*k*) adopting any measure, other than a measure specified in section 116 or in the foregoing provisions of this section, likely to promote the safety, health or convenience of the inhabitants of the cantonment ; or

(*l*) the doing of anything on which expenditure is declared by the Local Government, or by the Cantonment Authority with the sanction of the Local Government, to be an appropriate charge on the cantonment fund.

CHAPTER IX.

PUBLIC SAFETY AND SUPPRESSION OF NUISANCE.

General Nuisance.

Penalty for causing nuisance.

118. (*1*) Whoever—

(*a*) in any street or other public place within a cantonment—

(*i*) is drunk and disorderly or drunk and incapable of taking care of himself ; or

(*ii*) uses any threatening, abusive or insulting words, or behaves in a threatening or insulting manner, with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned ; or

(*iii*) eases himself, or wilfully or indecently exposes his person ; or

(*iv*) loiters, or begs importunately for alms ; or

(*v*) exposes or exhibits, with the object of exciting charity, any deformity or disease or any offensive sore or wound ; or

(*vi*) carries meat exposed to public view ; or

(*vii*) is found gaming ; or

(*viii*) pickets animals, or collects carts ; or

(*ix*) being engaged in the removal of night-soil or other offensive matter or rubbish, wilfully or negligently permits any portion thereof to spill or fall, or neglects to sweep away or otherwise effectually to remove any portion thereof which may spill or fall in such street or place ; or

(*x*) without proper authority affixes upon any building, monument, post, wall, fence, tree or other thing, any bill, notice or other document ; or

(*xi*) without proper authority defaces or writes upon or otherwise marks any building, monument, post, wall, fence, tree or other thing ; or

(*xii*) without proper authority removes, destroys, defaces or otherwise obliterates any notice or other document put up or exhibited under this Act ; or

(*xiii*) without proper authority displaces, damages, or makes any alteration in, or otherwise interferes with, the pavement, gutter, stormwater-drain, flags or other materials of any such street, or any lamp, bracket, direction-post, hydrant or water-pipe maintained by the Cantonment Authority in any such street or public place, or extinguishes a public light ; or

(*xiv*) carries any corpse not decently covered or without taking due precautions to prevent risk of infection or injury to the public health or annoyance to passers by or to persons dwelling in the neighbourhood ; or

(*xv*) carries night-soil or other offensive matter or rubbish at any hour prohibited by the Cantonment Authority by public notice, or any pattern of cart or receptacle which has not been approved for the purpose by the Cantonment Authority, or fails to close such cart or receptable when in use ; or

(*b*) carries night-soil or other offensive matter or rubbish along any route in contravention of any prohibition made in this behalf by the Contonment Authority by public notice ; or

(*c*) deposits, or causes or permits to be deposited, earth or materials of any description, or any offensive matter or rubbish, in any place not intended for the purpose in any street or other public place or waste or unoccupied land under the management of the Cantonment Authority ; or

(*d*) having charge of a corpse fails to bury, burn or otherwise lawfully dispose of the same within twenty-four hours after death ; or

(*e*) makes any grave or buries or burns any corpse in any place not set apart for such purpose ; or

(*f*) keeps or uses, or knowingly permits to be kept or used, any place as a common gaming house, or assists in conducting the business of any common gaming house ; or

(*g*) at any time or place at which the same has been prohibited by the Cantonment Authority by public or special notice, beats a drum or tom tom, or blows a horn or trumpet, or beats any utensil, or sounds any brass or other instrument, or plays any music ; or

(*h*) disturbs the public peace or order by singing, screaming or shouting ; or

(*i*) lets loose any animal so as to cause, or negligently allows any animal to cause, injury, danger, alarm or annoyance to any person ; or

(*j*) being the occupier of any building or land in or upon which an animal dies, neglects within three hours of the death of the animal, or, if the death occurs at night, within three hours after sun-rise, either—

(*i*) to report the occurrence to the Executive Officer or to an officer, if any, appointed by him in this behalf with a view to securing the removal and disposal of the carcase by the public conservancy establishment, or

(*ii*) to remove and dispose of the carcase in accordance with any general directions given by the Cantonment Authority by public notice or any special directions given by the Executive Officer on receipt of such report as aforesaid ; or

(*k*) save with the written permission of the Cantonment Authority and in such manner as it may authorize, stores or uses night-soil, manure, rubbish or any other substance emitting an offensive smell ; or

(*l*) uses or permits to be used as a latrine any place not intended for that purpose ;

shall be punishable with fine which may extend to fifty rupees.

(*2*) Whoever does not take reasonable means to prevent any child under the age of twelve years, being in his charge, from easing himself in any street or other public place within the cantonment shall be punishable with fine which may extend to twenty-five rupees.

(*3*) The owner or keeper of any animal found picketed or straying without a keeper in a street or other public place in a

cantonment shall be punishable with fine which may extend to twenty rupees.

(4) Any animal found picketed as aforesaid may be removed by any officer or servant of the Cantonment Authority or by any police officer to a pound as if the animal had been found straying.

Dogs.

Registration and control of dogs.

119. (1) A Cantonment Authority may make bye-laws to provide for the registration of all dogs kept within the cantonment.

(2) Such bye-laws shall—

(a) require the registration, by the Officer Commanding each military unit, of all dogs kept in the lines occupied by that unit ;

(b) require that every registered dog shall wear a collar to which shall be attached a metal token to be issued by the registration authority, and fix the fee payable for the issue thereof ;

(c) require that any dog which has not been registered or which is not wearing such token shall, if found in any public place, be detained at a place set apart for the purpose ; and

(d) fix the fee which shall be charged for such detention and provide that any such dog shall, be liable to be destroyed or otherwise disposed of unless it is claimed, and the fee in respect thereof is paid, within one week ;

and may provide for such other matters as the Cantonment Authority thinks fit.

(3) A Cantonment Authority may—

(a) cause to be destroyed, or to be confined for such period as that Authority may direct, any dog or other animal which is, or is reasonably suspected to be, suffering from rabies, or which has been bitten by any dog or other animal suffering or suspected to be suffering from rabies ;

(b) by public notice direct that, after such date as may be specified in the notice, dogs which are without collars or without marks distinguishing them as private property and are found straying on the streets or beyond the enclosures of the houses of their owners, if any, may be destroyed, and cause them to be destroyed accordingly.

(4) No damages shall be payable in respect of any dog or other animal destroyed or otherwise disposed of under this section.

(5) Whoever, being the owner or person in charge of any dog, neglects to restrain it so that it shall not be at large in any street without being muzzled and without being secured by a chain lead, in any case in which—

(a) he knows that the dog is likely to annoy or intimidate any person, or

(b) the Cantonment Authority has, by public notice during the prevalence of rabies, directed that dogs shall not be at large without muzzles and chain leads,

shall be punishable with fine which may extend to one hundred rupees.

(6) Whoever in a cantonment—

(a) allows any ferocious dog which belongs to him or is in his charge to be at large without being muzzled, or

(b) sets on or urges any dog or other animal to attack, worry or intimidate any person, or

(c) knowing or having reason to believe that any dog or animal belonging to him or in his charge has been bitten by an animal suffering or reasonably suspected to be suffering from rabies, neglects to give immediate information of the fact to the Executive Officer or gives information which is false,

shall be punishable with fine which may extend to two hundred rupees.

Traffic.

Rule of the road.

120. Whoever in driving, leading or propelling a vehicle along a street fails, except in a case of actual necessity,—

(a) to keep to the left when passing a vehicle coming from the opposite direction, or

(b) to keep to the right when passing a vehicle going in the same direction as himself,

shall be punishable with fine which may extend to fifty rupees.

Prevention of Fire, etc.

Use of inflammable materials for building purposes.

121. (1) A Cantonment Authority may, by public notice, direct that within such limits in the cantonment as may be specified in the notice, the roofs and external walls of huts or other buildings shall not, without the permission in writing of the Cantonment Authority, be made or renewed of grass, mats, leaves or other inflammable materials, and may, by notice in writing, require any person who has disobeyed any such direction as aforesaid to remove or alter the roofs or walls so made or renewed.

(2) A Cantonment Authority may, by notice in writing, require the owner of any building in the cantonment which has an external roof or wall made of any such material as aforesaid to remove such roof or wall within such time as may be specified in the notice, notwithstanding that a public notice under sub-section (1) has not been issued or that such roof or wall was made with the consent of the Cantonment Authority or before the issue of such public notice:

Provided that in the case of any such roof or wall in existence before the issue of such a public notice or made with the consent of the Cantonment Authority, that authority shall make compensation, not exceeding the original cost of constructing the roof or wall, for any damage caused by the removal.

Stacking or collecting inflammable materials.

122. A Cantonment Authority may, by public notice, prohibit in any case where such prohibition appears to it to be necessary for the prevention of danger to life or property, the stacking or collecting of wood, dry grass, straw or other inflammable materials, or the placing of mats or thatched huts or the lighting of fires in any place in the cantonment, or within any limits therein, which may be specified in the notice.

Care of naked lights.

123. No person shall set a naked light on or near any building in any street or other public place in a cantonment in such manner as to cause danger of fire:

Provided that nothing in this section shall be deemed to prohibit the use, subject to the permission in writing of the Cantonment Authority, of lights for purposes of illumination, on the occasion of a festival or public or private entertainment.

Regulation of cinematographic and dramatic performances.

124. (1) Notwithstanding anything contained in the Cinematograph Act, 1918, no exhibition of pictures or other optical effects by means of a cinematograph or other like apparatus for the purpose of which inflammable films are used, and no public dramatic performance or pantomime, shall be given in any cantonment elsewhere than in premises for which a licence has been granted by the Cantonment Authority under this section. II of 1918.

(2) If the owner of a cinematograph or other apparatus uses the apparatus or allows it to be used, or if any person takes any part in any public dramatic performance or pantomime, in contravention of the provisions of this section, or if

the occupier of any premises allows them to be used in contravention of the provisions of this section or of any condition of any licence granted under this section, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to fifty rupees for each day after the first during which the offence continues.

(3) Nothing in this section shall be deemed to prohibit the giving of any exhibition or any dramatic performance or pantomime in any theatre or institute which is the property of Government where the exhibition, performance or pantomime is held with the permission and under the control of the military authorities.

Discharging fire-works, fire-arms. etc.

125. Whoever in a cantonment discharges any fire-arm or lets off fireworks or fire-balloons or engages in any game in such manner as to cause or to be likely to cause danger to persons passing by or dwelling or working in the neighbourhood or risk of injury to property shall be liable to fine which may extend to fifty rupees.

Power to require building, wells, etc., to be rendered safe.

126. Where in a cantonment any building, or wall, or any thing affixed thereto, or any well, tank, reservoir, pool, depression, or excavation, or any bank or tree, is, in the opinion of the Cantonment Authority, for want of sufficient repairs, protection or enclosure, dangerous to persons passing by or dwelling or working in the neighbourhood, the Cantonment Authority may, by notice in writing, require the owner thereof to repair, protect or enclose the same in such manner as it thinks necessary; and, if the danger is, in the opinion of the Cantonment Authority, imminent, it shall forthwith take such steps as it thinks necessary to avert the same.

Enclosure of waste land used for improper purposes.

127. A Cantonment Authority may, by notice in writing, require the owner or part owner, or person claiming to be the owner or part owner, of any building or land in the cantonment, or the lessee or the person claiming to be the lessee of any such land, which, by reason of disuse or disputed ownership or other cause, has remained unoccupied and has become the resort of idle and disorderly persons or of persons who have no ostensible means of subsistence or cannot give a satisfactory account of themselves, or is used for gaming or immoral purposes, or otherwise occasions or is likely to occasion a nuisance, to secure and enclose the same within such time as may be specified in the notice.

CHAPTER X.

SANITATION AND THE PREVENTION AND TREATMENT OF DISEASE.

Sanitary Authorities.

Responsibility for sanitation.

128. The following officers shall, for the purposes of sanitation, have control over, and be responsible for maintaining in a sanitary condition, those parts of a cantonment, respectively, which are specified in the case of each, that is to say :—

(a) the Commanding Officer of the cantonment—all buildings and lands which are occupied or used for military purposes;

(b) the Officer Commanding the air forces in the cantonment—all buildings and lands which are occupied or used for air-force purposes;

(c) the head of any civil department or railway administration occupying as such any part of the cantonment—all buildings and lands in his charge as head of that department or administration.

General duties of Health Officer.

129. (*1*) The Health Officer shall exercise a general sanitary supervision over the whole cantonment and shall submit monthly to the Cantonment Authority a report as to the sanitary condition of the cantonment, together with such recommendations in connection therewith as he thinks fit.

(*2*) The Assistant Health Officer shall perform such duties in connection with the sanitation of the cantonment as are, subject to the control of the Cantonment Authority, allotted to him by the Health Officer.

Conservancy and Sanitation.

Public latrines, urinals, and conservancy establishments.

130. All public latrines and urinals provided or maintained by a Cantonment Authority shall be so constructed as to provide separate compartments for each sex and not to be a nuisance, and shall be provided with all necessary conservancy establishments, and shall regularly be cleansed and kept in proper order.

Power of Cantonment Authority to undertake private conservancy arrangements.

131. (*1*) On the application or with the consent of the occupier of any building or land, or, where the occupier of any building or land fails to make arrangements to the satisfaction of the Cantonment Authority for the matters referred to in this section, without such consent, and after giving notice in writing to the occuper, a Cantonment Authority may undertake the house scavenging of any building or land in the cantonment for such period as it thinks fit on such terms as it may prescribe in this behalf.

(*2*) Where the Cantonment Authority has undertaken the duties referred to in this section, all matter removed in the performance of such duties shall be the property of that Authority.

(*3*) For the purposes of this section, "house scavenging" means the removal of filth or rubbish or other offensive matter from a privy, latrine, urinal, drain, cess-pool, or other common receptacle for such matter.

Deposit and disposal of rubbish, etc.

132. (*1*) Every Cantonment Authority shall provide or appoint, in proper and convenient situations, public receptacles, depots or places for the temporary deposit or diposal of household rubbish, offensive matter, carcases of dead animals, and sewage.

(*2*) The Cantonment Authority may, by public notice, issue directions as to the time at which, the manner in which, and the conditions subject to which, any matter referred to in sub-section (*1*) may be removed along a street or may be deposited or otherwise disposed of.

(*3*) All matter deposited in receptacles, depôts or places provided or appointed under this section shall be the property of the Cantonment Authority.

Cess-pools, receptacles for filth, etc.

133. The Executive Officer of any Cantonment may, by notice in writing,—

(*a*) require any person having the control whether as owner, lessee or occupier of any land or building in the cantonment—

(*i*) to close any cess-pool appertaining to the land or building which is, in the opinion of the Executive Officer, a nuisance, or

(*ii*) to keep in a clean condition, in such manner as may be prescribed by the notice, any receptacle for filth or sewage accumulating on the land or in the building, or

(*iii*) to prevent the water of any private latrine, urinal, sink or bath-room, or any other offensive matter, from soaking, draining or flowing, or being put, from the land or building upon any street or other public place, or into any water-course or into any drain not intended for the purpose, or

(iv) to collect and deposit for removal by the conservancy establishment of the Cantonment Authority, within such time and in such receptacle or place, situate at not more than one hundred feet from the nearest boundary of the premises, as may be specified in the notice, any offensive matter or rubbish which such person has allowed to accumulate or remain under, in or on such building or land ; or

(b) require any person to desist from making or altering any drain leading into a public drain, or

(c) require any person having the control of a drain in the cantonment to cleanse, purify, repair or alter the same, or otherwise put it in good order, within such time as may be specified in the notice.

Filling up of tank, etc.

134. (1) Where any well, tank, cistern, reservoir, receptacle or other place in the cantonment where water is stored or accumulates, whether within any private enclosure or not, is in such a condition as to create a nuisance or, in the opinion of the Health Officer, or the Assistant Health Officer, is or is likely to be a breeding place for mosquitoes, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier thereof within such period as may be specified in the notice, to fill up or cover the well, cistern, reservoir or receptacle, or to fill up the tank, or to drain off or remove the water, as the case may be.

(2) The Cantonment Authority may, if it thinks fit, with the previous sanction of the Officer Commanding the District, meet the whole or any portion of the expenses incurred in complying with a requisition under sub-section (1).

Provision of latrines, etc.

135. A Cantonment Authority may, by notice in writing, require the owner or lessee of any building or land in the cantonment to provide, in such manner as may be specified in the notice, any latrine, urinal, cess-pool, dust-bin or other receptacle for filth, sewage, or rubbish, or any additional latrine, urinal, cess-pool or other receptacle as aforesaid, which should, in its opinion, be provided for the building or land.

Sanitation in factories, etc.

136. Every person employing, whether on behalf of the Government or otherwise, more than ten workmen or labourers, and every person managing or having control of a market, school, theatre or other place of public resort, in a cantonment shall give notice of the fact to the Cantonment Authority, and shall provide such latrines and urinals, and shall employ such number of sweepers, as the Cantonment Authority thinks fit, and shall cause the latrines and urinals to be kept clean and in proper order :

Provided that nothing in this section shall apply in the case of a factory to which the Indian Factories Act, 1911, applies. XII of 1911.

Private latrines.

137. A Cantonment Authority may, by notice in writing,—

(a) require the owner or other person having the control of any private latrine or urinal in the cantonment not to put the same to public use ; or

(b) where any plan for the construction of private latrines or urinals has been approved by the Cantonment Authority, and copies thereof may be obtained free of charge on application,—

(i) require any person repairing or constructing any such private latrine or urinal not to allow the same to be used until it has been inspected by or under the direction of the Heath Officer and approved by him as conforming with such plan, or

(ii) require any person having control of any such private latrine or urinal to re-build or alter the same in accordance with such plan ; or

(c) require the owner or other person having the control of any such private latrine or urinal which, in the opinion of the Cantonment Authority, constitutes a nuisance, to remove the latrine or urinal; or

(d) require any person having the control whether as owner, lessee or occupier of any land or building in the cantonment—

(i) to have any latrines provided for the same shut out by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood, or

(ii) to cleanse in such a manner as the Cantonment Authority may specify in the notice any latrine or urinal belonging to the land or building; or

(e) require any person being the owner and having the control of any drain in the cantonment to provide, within ten days from the service of the notice, such covering as may be specified in the notice.

Removal of congested buildings.

158. (1) Where it appears to a Cantonment Authority that any block of buildings in the cantonment is in an unhealthy condition by reason of the manner in which the buildings are crowded together, or of the narrowness or closeness of the street, or of the want of proper drainage or ventilation, or of the impracticability of cleansing the buildings or other similar cause, it may cause the block to be inspected by a committee consisting of—

(a) the Health Officer,

(b) the Civil Surgeon of the district or, if his services are not available, some other medical officer of the Government, and

(c) the Executive Engineer or a person deputed by the Executive Engineer in this behalf.

(2) The committee shall make a report in writing to the Cantonment Authority regarding the sanitary condition of the block, and, if it considers that the condition thereof is likely to cause risk of disease to the inhabitants of the building or of the neighbourhood or otherwise to endanger the public health, it shall clearly indicate on a plan verified by the Executive Engineer or the person deputed by him to serve on the committee, the buildings which should in its opinion wholly or in part be removed in order to abate the unhealthy condition of the block.

(3) If, upon receipt of such report, the Cantonment Authority is of opinion that all or any buildings indicated should be removed, it may, by notice in writing, require the owners thereof to remove them:

Provided that the Cantonment Authority shall make compensation to the owners for any buildings so removed which may have been erected under proper authority:

Provided, further, that the Cantonment Authority may, if it considers it equitable in the circumstances so to do, pay to the owners such sum as it thinks fit as compensation for any buildings so removed which have not been erected under proper authority.

(4) For the purposes of this section "buildings" includes enclosure walls and fences appertaining to buildings.

Overcrowding of dwelling houses.

159. (1) Where it appears to a Cantonment Authority that any building or part of a building in the cantonment which is used as a dwelling house is so overcrowded as to endanger the health of the inmates thereof, it may, after such enquiry as it thinks fit, by notice in writing require the owner or occupier of the building or part thereof, as the case may be, within such time not being less than one month as may be specified in the notice, to abate the overcrowding of the same by reducing the number of lodgers, tenants, or other inmates to such number as may be specified in the notice.

(2) Any person who fails, without reasonable cause, to comply with a requisition made upon him under sub-section (1) shall be punishable with fine which may extend to fifty

rupees, and, in the case of a continuing offence, to an additional fine which may extend to five rupees for every day after the first during which the failure has continued.

Power to require repair or alteration of building.

140. (*1*) Where any building in a cantonment is so ill-constructed or dilapidated as to be, in the opinion of the Cantonment Authority, in an insanitary state, the Cantonment Authority may, by notice in writing, require the owner, within such time as may be specified in the notice, to execute such repairs or to make such alterations as it thinks necessary for the purpose of removing such defects.

(*2*) A copy of every notice issued under sub-section (*1*) shall be conspicuously posted on the building to which it relates.

(*3*) A notice issued under sub-section (*1*) shall be deemed to have been complied with if the owner of the building to which it relates has, instead of executing the repairs or making the alterations directed by the notice, removed the building.

Power to require land or building to be cleansed.

141. (*1*) The Executive Officer may, by notice in writing, require the owner, lessee or occupier of any building or land in the cantonment, which appears to him to be in the filthy or insanitary state, within twenty-four hours to cleanse the same or otherwise put it in a proper state, in such manner as may be specified in the notice.

(*2*) If, within three months from the date of the service of a notice under sub-section (*1*), any building or land in respect of which the notice was issued is again in a filthy or insanitary state, the owner, lessee or occupier, as the case may be, shall be punishable with fine which may extend to two hundred rupees.

Power to order disuse of house.

142. If a Cantonment Authority is satisfied that any building or part of a building in the cantonment which is intended for or used as a dwelling place is unfit for human habitation, it may cause a notice to be posted on some conspicuous part of the building prohibiting the owner or occupier thereof from using the building or room for human habitation, or allowing it to be so used, until it has been rendered fit for such use to the satisfaction of the Cantonment Authority.

Removal of noxious vegetation.

143. A Cantonment Authority may, by notice in writing, require the owner, lessee, or occupier of any land in the cantonment to clear away and remove any thing or noxious vegetation or undergrowth which appears to it to be injurious to health or offensive to persons residing in the neighbourhood.

Agriculture and irrigation.

144. Where, in the opinion of a Cantonment Authority, the cultivation in the cantonment of any description of crop or the use therein of any kind of manure or the irrigation of any land therein in any specified manner is likely to be injurious to the health of persons dwelling in the neighbourhood, the Cantonment Authority may, by public notice, prohibit such cultivation, use or irrigation after such date as may be specified in the notice, or may, by a like notice, direct that it shall be carried out subject to such conditions as the Cantonment Authority thinks fit:

Provided that if, when a notice is issued under this section, any land to which it relates has been lawfully prepared for cultivation or any crop is sown therein or is standing thereon, the Cantonment Authority shall, if it directs that the notice is to take effect on a date earlier than that by which the crop would ordinarily be sown or reaped, as the case may be, make compensation to all persons interested in the land or crop for the loss, if any, incurred by them respectively by reason of compliance with the notice.

Burial and Burning Grounds.

Power to call for information regarding burial and burning grounds.

145. A Cantonment Authority may, by notice in writing, require the owner or person in charge of any burial or burning ground in the cantonment to supply such information as may be specified in the notice concerning the condition, management or position of such ground.

Permission for use of new burial or burning ground.

146. (*1*) No place in a cantonment which has not been used as a burial or burning ground before the commencement of this Act shall be so used without the permission in writing of the Cantonment Authority.

(*2*) Such permission may be granted subject to any conditions which the Cantonment Authority thinks fit to impose for the purpose of preventing annoyance to, or danger to the health of, persons residing in the neighbourhood.

Power to require closing of burial or burning ground.

147. (*1*) Where a Cantonment Authority, after making or causing to be made local inquiry, is of opinion that any burial or burning ground in the cantonment has become offensive to, or dangerous to the health of, persons living in the neighbourhood, it may, with the previous sanction of the Local Government, by notice in writing, require the owner or person in charge of such ground to close the same from such date as may be specified in the notice.

(*2*) Where the Local Government sanctions the issue of any notice under sub-section (*1*), it shall declare the conditions on which the burial or burning ground may be reopened, and a copy of such declaration shall be annexed to the notice.

(*3*) Where the Local Government sanctions the issue of any such notice, it shall require a new burial or burning ground to be provided at the expense of the cantonment fund or, if the community concerned is willing to provide a new burial or burning ground, the Local Government shall require a grant to be made from the cantonment fund towards the cost of the same.

(*4*) No corpse shall be buried or burnt in any burial or burning ground in respect of which a notice issued under this section is for the time being in force.

Exemption from operation of sections 145 to 147.

148. The provisions of sections 145, 146 and 147 shall not apply in the case of any burial ground which is for the time being managed by or on behalf of the Government.

Removal of corpses.

149. A Cantonment Authority may, by public notice, prescribe routes in the cantonment by which alone corpses may be removed to burial or burning grounds.

Prevention of Infectious or Contagious Diseases.

Obligation to give information of infectious or contagious diseases.

150. Whoever, being in charge of, or in attendance whether as a medical practitioner or otherwise upon, any person in a cantonment, whom he knows or has reason to believe to be suffering from a contagious or infectious disease, or being the owner, lessee or occupier of any building in a cantonment in which he knows that any such person is so suffering, shall, if he fails to give information, or if he gives false information, to the Cantonment Authority respecting the existence of such disease, be punishable with fine which may extend to one hundred rupees :

Provided that no person shall be punishable under this section for failure to give information if he had reasonable cause to believe that the information had already been duly given :

Provided, further, that this section shall not apply in the case of venereal disease where the person suffering therefrom is under specific and adequate medical treatment and is, by reason of his habits and conditions of life and residence, unlikely to spread the disease.

Special measures in case of outbreak of infectious or epidemic diseases.

151. (*1*) In the event of a cantonment being visited or threatened by an outbreak of any infectious or contagious disease among the inhabitants thereof or of any epidemic disease among any animals therein, the Officer Commanding the District if he thinks that the provisions of this Act or of any law for the time being in force in the cantonment are insufficient for the purpose, may, with the previous sanction of the Local Government,—

(*a*) take such special measures, and

(*b*) by public notice, make such temporary regulations to be observed by the public or by any class or section of the public,

as he thinks necessary to prevent the outbreak or the spread of the disease.

(2) Whoever commits a breach of any temporary regulation made under sub-section (1) shall be deemed to have committed an offence under section 188 of the Indian Penal Code. XLV of 1860.

Power to require names of dairyman's customers.

152. Where it is certified to the Executive Officer by a medical practitioner that the outbreak or spread of any infectious or contagious disease in the cantonment is, in the opinion of such medical practitioner, attributable to the milk supplied by any dairyman, the Executive Officer may, by notice in writing, require the dairyman, within such time as may be specified in the notice, to furnish him with a full and complete list of the names and addresses of all his customers within the cantonment or to give him such information as will enable him to trace the persons to whom the dairyman has sold milk.

Power to require names of a washerman's customers.

153. Where it is certified to the Executive Officer by the Health Officer that it is desirable, with a view to prevent the spread of any infectious or contagious disease in the cantonment, that the Health Officer should be furnished with a list of the customers of any washerman, the Executive Officer may, by notice in writing, require the washerman, within a time to be specified in the notice, to furnish the Health Officer with a full and complete list of the names and addresses of all owners within the cantonment of clothes and other articles which the washerman washes or has washed during the six weeks immediately preceding the date of the notice.

Report after inspection of dairy or washerman's place of business.

154. Where, after inspection, the Health Officer is of opinion that any infectious or contagious disease is caused or is likely to arise in the cantonment from the consumption of the milk supplied from a dairy or from the washing of clothes or other articles in any place, or from any process employed by a washerman, he shall report the matter to the Executive Officer.

Action on report submitted by Health Officer.

155. Upon receipt of a report submitted by the Health Officer under section 154, the Executive Officer may, by notice in writing,—

(a) prohibit the supply of milk from the dairy until the notice has been withdrawn; or

(b) prohibit the washerman from washing clothes or other articles in any such place or by any such process as aforesaid until the notice has been withdrawn or unless he uses such place in such manner, or washes by such process, as the Executive Officer may direct in the notice.

Examination of milk or washed clothes.

156. The Health Officer may take possession of any milk clothes or other articles which are or have recently been in the possession of any dairyman on whom a notice has been served under section 152, or of any clothes or other articles which are or have recently been in the possession of any washerman, on whom a notice has been served under section 153, and may subject the same or cause the same to be subjected to such chemical or other process as he may think necessary, and the Cantonment Authority shall pay from the cantonment fund all the costs of the process and shall also pay to the owner of the milk, clothes or other articles such sum as compensation for any loss occasioned by such process as may appear to it to be reasonable.

Contamination of public conveyance.

157. Whoever in a cantonment—

(a) uses a public conveyance while suffering from an infectious or contagious disease, or

(b) uses a public conveyance for the carriage of a person who is suffering from any such disease, or

(c) uses a public conveyance for the carriage of the corpse of a person who has died from any such disease,

shall be bound to take proper precautions against the communication of the disease to other persons using or who may

thereafter use the conveyance and to notify such use to the owner, driver or person in charge of the conveyance and further to report without delay to the Executive Officer the number of the conveyance and the name of the person so notified.

Disinfection of public conveyance.

158. (1) Where any person suffering from, or the corpse of any person who has died from, an infectious or contagious disease has been carried in a public conveyance which ordinarily plies in a cantonment, the driver thereof shall forthwith report the fact to the Executive Officer who shall forthwith cause the conveyance to be disinfected if that has not already been done.

(2) No such conveyance shall be brought again into use until the Executive Officer has granted a certificate stating that it can be used without causing risk of infection.

Penalty for failure to report.

159. Whoever fails to make to the Executive Officer any report which he is required to make by section 157 or section 158, shall be punishable with fine which may extend to one hundred rupees.

Driver of conveyance not bound to carry person suffering from infectious or contagious disease.

160. Notwithstanding anything contained in any law for the time being in force, no owner, driver or person in charge of a public conveyance shall be bound to convey or to allow to be conveyed in such conveyance in or in the vicinity of a cantonment any person suffering from an infectious or contagious disease or the corpse of any person who has died from such disease unless and until such person pays or tenders a sum sufficient to cover any loss and expense which would ordinarily be incurred in disinfecting the conveyance.

Disinfection of building or articles therein.

161. Where a Cantonment Authority is, upon the advice of the Health Officer, of opinion that the cleansing and disinfection of any building or part of a building in the cantonment or of any articles in any such building or part which are likely to retain infection, or the renewal of the flooring of any such building or part of such building, would tend to prevent or check the spread of any infectious or contagious disease, he may, by notice in writing, require the owner or occupier to cleanse and disinfect the said building, part or articles, as the case may be, or to renew the said flooring, within such time as may be specified in the notice:

Provided that where, in the opinion of the Cantonment Authority, the owner or occupier is from poverty or any other cause unable effectually to carry out any such requisition, the Cantonment Authority may, at the expense of the cantonment fund, cleanse and disinfect the building, part or articles, or, as the case may be, renew the flooring.

Destruction of infectious hut or shed.

162. (1) Where the destruction of any hut or shed in a cantonment is, in the opinion of the Cantonment Authority, necessary to prevent the spread of any infectious or contagious disease, the Cantonment Authority may, by notice in writing, require the owner to destroy the hut or shed and the materials thereof within such time as may be specified in the notice.

(2) Where the President of a Board or, where there is no Board, the Commanding Officer of the cantonment is satisfied that the destruction of any hut or shed in the cantonment is immediately necessary for the purpose of preventing the spread of any infectious or contagious disease, he may order the owner or occupier of the hut or shed to destroy the same forthwith or may himself cause it to be destroyed after giving not less than two hours' notice to the owner or occupier thereof.

(3) The Cantonment Authority shall pay compensation to the owner of any hut or shed destroyed under this section.

Temporary shelter for inmates of disinfected or destroyed building or shed.

163. The Cantonment Authority shall provide free of charge temporary shelter or house accommodation for the members of any family in which an infectious or contagious disease has appeared who have been compelled to leave their dwelling by reason of any proceedings taken under section 161 or section 162, and who desire such shelter or accommodation as aforesaid to be provided for them.

Disinfection of building before letting the same.

164. (*1*) Where in a cantonment any building or part of a building is intended to be let in which any person has, within the six weeks immediately preceding, been suffering from an infectious or contagious disease, the person letting the building or part shall before doing so disinfect the same in such manner as the Cantonment Authority may, by public or special notice, direct, together with all articles therein liable to retain infection.

(*2*) For the purposes of this section, the keeper of an hotel, lodging house or sarai shall be deemed to let to any person who is admitted as a guest therein that part of the building in which such person is permitted to reside.

Disposal of infected article without disinfection.

165. No person shall, without previous disinfection of the same, give, lend, sell, transmit or otherwise dispose of to another person any article or thing which he knows or has reason to believe has been exposed to contamination by any infectious or contagious disease and is likely to be used in, or taken into, a cantonment.

Means of disinfection.

166. (*1*) Every Cantonment Authority shall—

(*a*) provide proper places with necessary attendants and apparatus for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection ;

(*b*) cause conveyances, clothing or other articles brought for disinfection to be disinfected either free of charge or on payment of such charges as it may fix.

(*2*) A Cantonment Authority may notify places at which articles of clothing, bedding, conveyances or other articles which have been exposed to infection shall be washed, and, if it does so, no person shall wash any such thing at any place not so notified without having previously disinfected such thing.

(*3*) The President of a Board or, where there is no Board, the Commanding Officer of the cantonment, may direct the destruction of any clothing, bedding or other article in the cantonment likely to retain infection and may give such compensation as he thinks fit for any article so destroyed.

Making or selling of food, etc., or washing clothes by infected person.

167. Whoever, while suffering from, or in circumstances in which he is likely to spread, any infectious or contagious disease,—

(*a*) makes, carries or offers for sale in a cantonment or takes any part in the business of making, carrying or offering for sale therein any article of food or drink or any medicine or drug for human consumption, or any article of clothing or bedding for personal use or wear, or

(*b*) takes any part in the business of the washing or carrying of clothes,

shall be punishable with fine which may extend to one hundred rupees.

Power to restrict or prohibit sale of food or drink.

168. When a cantonment is visited or threatened by an outbreak of any infectious or contagious disease, the Cantonment Authority may, by public notice, restrict in such manner or prohibit for such period, as may be specified in the notice, the sale or preparation of any article of food or drink for human consumption specified in the notice or the sale of any flesh of any description of animals so specified.

Control over wells, tanks, etc.

169. (*1*) If a Cantonment Authority is of opinion that the water in any well, tank or other place is likely, if used for drinking, to engender, or cause the spread of, any disease, it may,—

(*a*) by public notice, prohibit the removal or use of such water for drinking.

(*b*) by notice in writing, require the owner or person having control of such well, tank or place to take such steps as may be directed by the notice to prevent the public from having access to or using such water ; or

(*c*) take such other steps as it may consider expedient to prevent the outbreak or spread of any such disease.

(2) In the event of a cantonment or any part of a cantonment being visited or threatened by an outbreak of any infectious or contagious disease, the Health Officer or any person authorized by him in this behalf may, without notice and at any time, inspect and disinfect any well, tank or other place from which water is, or is likely to be, taken for the purposes of drinking, and may further take such steps as he thinks fit to ensure the purity of the water or to prevent the use of the same for drinking purposes.

Disposal of infectious corpse.

170. Where any person has died in a contonment from any infectious or contagious disease, the Executive Officer may, by notice in writing,—

(a) require any person having charge of the corpse to convey the same to a mortuary thereafter to be disposed of in accordance with law ; or

(b) prohibit the removal of the corpse from the place where death occurred except for the purpose of being buried or burned or of being conveyed to a mortuary.

Hospitals and Dispensaries.

Maintenance or aiding of hospitals or dispensaries.

171. (1) A Cantonment Authority may—

(a) provide and maintain either within or without the cantonment as many hospitals and dispensaries as it thinks fit ; or

(b) make, upon such terms as it thinks fit to impose, a graint-in-aid to any hospital or dispensary, whether within or without the cantonment, not maintained by it.

(2) Every hospital or dispensary maintained or aided under sub-section (1) shall have attached to it a ward or wards for the treatment of persons suffering from infectious or contagions diseases.

(3) A medical officer, appointed in such manner as the Local Government may direct, shall be in charge of every hospital or dispensary maintained or aided under this section.

Medical supplies, appliances, etc.

172. (1) Every hospital or dispensary maintained or aided under section 171 shall be maintained in accordance with any general or special orders of the Governor General in Council or the Local Government for the conduct of hospitals and dispensaries or in accordance with the said orders modified in such manner as the Governor General in Council or the Local Government, as the case may be, thinks fit.

(2) The Cantonment Authority shall cause every such hospital or dispensary to be provided with all requisite drugs, instruments, apparatus, furniture and appliances and with sufficient cots, bedding and clothing for in-patients.

Free patients.

173. At every hospital or dispensary maintained or aided under section 171, the sick poor of the cantonment, and other inhabitants of the cantonment suffering from infectious or contagious diseases, and, with the sanction of the Cantonment Authority, any other sick persons, may receive medical treatment free of cost, and if treated as in-patients shall be either dieted gratuitously or, if the medical officer in charge so directs, shall be granted subsistence allowance on such scale as the Cantonment Authority may fix :

Provided that the subsistence allowance shall not be less than the lowest allowance for the time being fixed for the subsistence of judgment debtors by the Local Government under section 57 of the Code of Civil Procedure, 1908. V of 1908.

Paying patients.

174. Any sick person who is ineligible to receive medical treatment free of cost in any hospital or dispensary under section 173 may be admitted to treatment therein upon such terms as the Cantonment Authority thinks fit.

Power to order person to attend hospital or dispensary.

175. (*1*) If the medical officer in charge of a hospital or dispensary maintained or aided under section 171 has reason to believe that any person living in the cantonment is suffering from an infectious or contagious disease, he may, if he thinks necessary, by notice in writing, call upon such person to attend at the hospital or dispensary at such time as may be specified in the notice and not to quit it without the permission of the medical officer in charge, or may take such other measures or give such other directions in the matter as he thinks necessary.

(*2*) On the arrival of any such person at the hospital or dispensary, the medical officer may examine him for the purpose of satisfying himself whether or not such person is suffering from an infectious or contagious disease, and, if he is found to be so suffering, the medical officer may cause him to be detained in the hospital until he is free from the infection or contagion or may, if, having regard to the nature of the disease or the condition of the person suffering therefrom, or the general environment and circumstances of such person, he considers that the attendance of such person at the hospital or dispensary is inexpedient, discharge such person and take such measures or give such directions in the matter as he thinks necessary.

Power to exclude from cantonment persons refusing to attend hospital or dispensary.

176. (*1*) If the medical officer in charge of a hospital or dispensary maintained or aided under section 171 reports in writing to the Commanding Officer of the cantonment that any person having received a notice under section 175 has refused or omitted to attend at the hospital or dispensary, or that such person, having attended the hospital or dispensary, has quitted it without the permission of such medical officer, or has failed to comply with any direction given under section 175, the Commanding Officer of the cantonment may, by order in writing, direct such person to remove from the cantonment within twenty-four hours and not to re-enter it without his permission in writing.

(*2*) No person who has under sub-section (*1*) been ordered to remove from and not to re-enter a cantonment shall enter any other cantonment in British India without the written permission of the Commanding Officer of that cantonment.

Control of Traffic for hygienic purposes.

Routes for pilgrims and others.

177. (*1*) A Cantonment Authority may provide or prescribe suitable routes for the use of persons passing through the cantonment—

(*a*) on their way to or from fairs or places of pilgrimage or other places of public resort ; or

(*b*) during times when an infectious or contagious disease is prevalent ;

and may, by public notice, require such persons as aforesaid to use such routes and no others.

(*2*) All routes provided or prescribed under sub-section (*1*) shall be clearly and sufficiently indicated by the Cantonment Authority.

Special Conditions regarding Essential Services.

Conditions of service of sweepers.

178. (*1*) Whoever, being a sweeper employed by a Cantonment Authority, in the absence of a written contract authorising him so to do and without reasonable cause, resigns his employment or absents himself from his duty, without having given one month's notice to the Cantonment Authority, or neglects or refuses to perform his duties, or any of them, shall be punishable with imprisonment which may extend to one month.

(*2*) The Local Government may, by notification in the local official Gazette, direct that on and from such date as may be specified in the notification, the provisions of this section shall apply in the case of any specified class of servants employed by a Cantonment Authority whose functions intimately concern the public health or safety.

(*3*) For the purposes of this section, "sweeper" includes any menial servant employed by a Cantonment Authority in the removal or disposal of filth or rubbish.

CHAPTER XI.

CONTROL OVER BUILDINGS, STREETS, BOUNDARIES, TREES, ETC.

Buildings.

Notice of new buildings.

179. (*1*) Whoever intends to erect or re-erect any building in a cantonment shall give notice in writing of his intention to the Cantonment Authority.

(*2*) For the purposes of this Act, a person shall be deemed to erect or re-erect a building who—

(*a*) makes any material alteration or enlargement of any building, or

(*b*) converts into a place for human habitation any building not orginally constructed for that purpose, or

(*c*) converts into more than one place for human habitation a building originally constructed as one such place, or

(*d*) converts two or more places of human habitation into a greater number of such places, or

(*e*) converts into a stable, cattle-shed or cow-house any building orginally constructed for hunan habitation, or

(*f*) makes any alteration which he has reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene, or

(*g*) makes any alteration to any building which increases or diminishes the height of or area covered by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Act.

Conditions of valid notice.

180. (*1*) A person giving the notice required by section 179 shall specify the purpose for which it is intended to use the building to which such notice relates.

(*2*) No notice shall be valid until the information required under sub-section (*1*) and any further information and plans which may be required under by-laws made under this Act have been furnished to the satisfaction of the Cantonment Authority along with the notice.

Power of Cantonment Authority sanction refuse.

181. The Cantonment Authority may either refuse to sanction the erection or re-erection, as the case may be, of the building, or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely :—

(*a*) the free passage or way to be left in front of the building ;

(*b*) the space to be left about the building to secure free circulation of air and facilitate scavenging and the prevention of fire ;

(*c*) the ventilation of the building, the minimum cubic area of the rooms, and the number and height of the storeys of which the building may consist ;

(*d*) the provision and position of drains, latrines, urinals, cess pools or other receptacles for filth ;

(*e*) the level and width of the foundation, the level of the lowest floor and the stability of the structure ;

(*f*) the line of frontage with neighbouring buildings if the building abuts on a street ;

(*g*) the means to be provided for egress from the building in case of fire ;

(*h*) the materials and method of construction to be used for external and party walls for rooms, floors, fire-places and chimneys ;

(*i*) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on ; and

(*j*) any other matter affecting the ventilation and sanitation of the building ;

and the person erecting or re-erecting the building shall obey all such written directions in every particular.

(*2*) If the Cantonment Authority decides to refuse to sanction the erection or re-erection of the building, it shall communicate in writing the reasons for such refusal to the person by whom the notice was given.

(*3*) Where the Cantonment Authority neglects or omits, for six weeks after the receipt of a valid notice, to make and deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter, by a written communication, calls the attention of the Cantonment Authority to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication, the Cantonment Authority shall be deemed to have given sanction to the erection or re-erection, as the case may be, unconditionally.

(*4*) The Cantonment Authority may refuse to sanction the erection or re-erection of any building either on grounds affecting the particular building or in pursuance of a general scheme sanctioned by the Officer Commanding-in-Chief, the Command, restricting the erection or re-erection of buildings within specified limits for the prevention of overcrowding or in the interests of persons residing within such limits or for any other public purpose.

Compensation.

182. (*1*) No compensation shall be claimable by any person for any damage or loss which he may sustain in consequence of the refusal of the Cantonment Authority of sanction to the erection of any building or in respect of any direction issued by it under sub-section (*1*) of section 181.

(*2*) The Cantonment Authority shall make compensation to the owner of any building for any damage or loss sustained by him in consequence of the prohibition of the re-erection of any building or of its requiring any land belonging to him to be added to the street, or if the refusal is on the ground that the building is unsuitable in plan or design to the locality or is intended for a purpose unsuitable to the locality ;

Provided that the Cantonment Authority shall not be liable to make any compensation in respect of the prohibition of the re-erection of any building which for a period of three years or more immediately preceding such refusal has not been in existence or has been unfit for human habitation.

Lapse of sanction.

183. Every sanction for the erection or re-erection of a building given or deemed to have been given by the Cantonment Authority as hereinbefore provided shall be available for one year from the date on which it is given, and, if the building so sanctioned is not begun by the person who has obtained the sanction or some one lawfully claiming under him within that period, it shall not thereafter be begun without fresh sanction obtained in the manner hereinbefore provided.

Illegal erection and re-erection.

184. Whoever begins, continues or completes the erection or re-erection of a building—

(*a*) without having given a valid notice as required by sections 179 and 180, or before the building has been sanctioned or is deemed to have been sanctioned, or

(*b*) without complying with any direction made under sub-section (*1*) of section 181, or

(*c*) when sanction has been refused, or has ceased to be available,

shall be punishable with fine which may extend to five hundred rupees.

Power to stop erection or re-erection or to demolish.

185. A Cantonment Authority may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Cantonment Authority considers that such erection or re-erection is an offence under section 184, and may in any such case in like manner direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected :

Provided that the Cantonment Authority may instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable.

Power to make bye-laws.

186. A Cantonment Authority may make bye-laws prescribing—

(*a*) the manner in which notice of the intention to erect or re-erect a building in the cantonment shall be given to the Cantonment Authority and the information and plans to be furnished with the notice ;

(*b*) the type or description of buildings which may or may not, and the purpose for which a building may or may not, be erected or re-erected in any specified area or areas ;

(*c*) the minimum cubic capacity of any room or rooms in a building which is to be erected or re-erected ; and

(*d*) the fees payable on provision by the Cantonment Authority of plans or specifications of the type of buildings which may be erected in the cantonment or any part thereof.

Projections and obstructions

187. (*1*) No owner or occupier of any building in a cantonment shall, without the permission in writing of the Cantonment Authority, add to or place against or in front of the building any projection or structure overhanging, projecting into, or encroaching on, any street or any drain, sewer or aqueduct therein.

(*2*) The Cantonment Authority may, by notice in writing, require the owner or occupier of any such building to alter or remove any such projection or encroachment as aforesaid :

Provided that in the case of any projection or encroachment lawfully in existence at the commencement of this Act, the Cantonment Authority shall make compensation for any damage caused by the removal or alteration.

(*3*) The Cantonment Authority may, by order in writing, give permission to the owners or occupiers of buildings in any particular street to put up open verandahs, balconies or rooms projecting from any upper storey thereof to an extent beyond the line of the plinth or basement wall at such height from the level ground or street as may be specified in the order.

Unauthorised buildings over drains, etc.

188. A Cantonment Authority may, by notice in writing, require any person who has, without its permission in writing, newly erected or re-erected any building over any public sewer, drain, culvert, water-course or water pipe in the cantonment to pull down or otherwise deal with the same as it thinks fit.

Drainage and sewer connections.

189. (*1*) A Cantonment Authority may, by notice in writing, require the owner or lessee of any building or land in any street, at his own expense and in such manner as the Cantonment Authority thinks fit, to put up and keep in good condition proper troughs and pipes for receiving and carrying rain water from the building or land and for discharging the same or to establish and maintain any other connection or communication between such building or land and any drain or sewer.

(*2*) For the purpose of efficiently draining any building or land in the cantonment, the Cantonment Authority may, by notice in writing, require the owner or lessee of the building or land—

(*a*) to pave, with such materials and in such manner as it thinks fit, any courtyard, alley or passage between two or more buildings, or,

(*b*) to keep any such paving in proper repair.

Power to attach brackets for lamps.

190. A Cantonment Authority may attach to the outside of any building, or to any tree, in the cantonment brackets for lamps in such manner as not to occasion injury thereto or inconvenience.

Streets.

Temporary occupation of street, land, etc.

191. A Cantonment Authority may, by order in writing, permit the temporary occupation of any street, or of any land vested in the Cantonment Authority, for the purpose of depositing any building materials or making any temporary excavation therein, or erection thereon, subject to such conditions as it may prescribe for the safety or convenience of the public, and may charge a fee for such permission and may in its discretion withdraw such permission.

Closing and opening of streets.

192. (1) A Cantonment Authority shall not permanently close any street or open any new street without the previous sanction of the Officer Commanding the District.

(2) A Cantonment Authority may, by public notice, temporarily close any street or any part of a street for repair or for the purpose of carrying out any work connected with drainage, water-supply or lighting or any other work which it is by or under this Act required or permitted to carry out:

Provided that where, owing to any works or repairs or from any other cause, the condition of any street or of any waterworks, drain, culvert or premises vested in the Cantonment Authority, is such as to be likely to cause danger to the public, the Cantonment Authority shall—

(a) take all reasonable means for the protection of the adjacent buildings and land and provide reasonable means of access thereto;

(b) cause sufficient barriers or fences to be erected for the security of life and property, and cause such barriers or fences to be sufficiently lighted from sunset to sunrise.

Names of streets and numbers of buildings.

193. (1) A Cantonment Authority may cause a name to be given to any street and to be affixed on any building in the cantonment in such place as it thinks fit, and may also cause the number to be affixed to any such building.

(2) Whoever destroys, pulls down, defaces or alters any such name or number or puts up any name or number differing from that put up by the order of the Cantonment Authority shall be punishable with fine which may extend to twenty rupees.

Boundaries and Trees.

Boundary walls, hedges and fences.

194. (1) No boundary wall, hedge or fence of any material or description shall be erected in a cantonment without the permission in writing of the Cantonment Authority.

(2) A Cantonment Authority may, by notice in writing, require the owner or lessee of any land in the cantonment—

(a) to remove from the land any boundary wall, hedge or fence which is, in its opinion, unsuitable, unsightly or otherwise objectionable; or

(b) to construct on the land sufficient boundary walls, hedges or fences of such material, description or dimensions as may be specified in the notice; or

(c) to maintain the boundary walls, hedges or fences of such land in good order:—

Provided that, in the case of any such boundary wall, hedge or fence which was erected with the consent or under the orders of the Cantonment Authority or which was in existence at the commencement of this Act, the Cantonment Authority shall make compensation for any damage caused by the removal thereof.

(3) The Cantonment Authority may, by notice in writing, require the owner, lessee or occupier of any such land to cut or trim any hedge on the land in such manner and within such time as may be specified in the notice.

Felling, lopping and trimming of trees

195. (*1*) Where, in the opinion of a Cantonment Authority, the felling of any tree of mature growth standing in a private enclosure in the cantonment is necessary for any reason, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier of the land to fell the tree within such time as may be specified in the notice.

(*2*) A Cantonment Authority may—

(*a*) cause to be lopped or trimmed any tree standing on land in the cantonment which belongs to the Government; or

(*b*) by public notice require all owners, lessees or occupiers of land in the cantonment, or by notice in writing require the owner, lessee or occupier of any such land, to lop or trim, in such manner as may be specified in the notice, all or any trees standing on such land or to remove any dead trees from such land.

Digging of public land

196. Whoever, without the permission in writing of the Cantonment Authority, digs up the surface of any open space in the cantonment, which is not private property, shall be punishable with fine which may extend to twenty rupees, and in the case of a continuing offence, to an additional fine which may extend to five rupees for every day after the first during which the offence continues.

Improper use of land.

197. (*1*) If, in the opinion of a Cantonment Authority, the working of a quarry in the cantonment, or the removal of stone, earth or other material from the soil in any place in the cantonment, is dangerous to persons residing in or frequenting the neighbourhood of such quarry or place, or creates, or is likely to create, a nuisance, the Cantonment Authority may, by notice in writing, prohibit the owner, lessee or occupier of such quarry or place or the person responsible for such making or removal, from continuing or permitting the working of such quarry or the moving of such material, or require him to take such steps in the matter as the Cantonment Authority may direct for the purpose of preventing danger or abating the nuisance arising or likely to arise therefrom.

(*2*) If, in any case referred to in sub-section (*1*) the Cantonment Authority is of opinion that such a course is necessary in order to prevent imminent danger, it may, by order in writing, require a proper hoarding or fence to be put up for the protection of passers by.

CHAPTER XII.

MARKETS, SLAUGHTER-HOUSES, TRADES AND OCCUPATIONS.

Public markets and slaughter-houses.

198. (*1*) A Cantonment Authority may provide and maintain, either within or without the cantonment, public markets and public slaughter-houses, to such number as it thinks fit, together with stalls, shops, sheds, pens and other buildings or conveniences for the use of persons carrying on trade or business in or frequenting such markets or slaughter-houses, and may provide and maintain in any such market buildings, places, machines, weights, scales and measures for the weighment or measurement of goods sold therein.

(*2*) When such market or slaughter-house is situated beyond cantonment limits, the Cantonment Authority shall have the same power for the inspection and proper regulation of the same as if it were situated within those limits.

(*3*) The Cantonment Authority may at any time, by public notice, close any public market or public slaughter-house or any part thereof.

(*4*) Nothing in this section shall be deemed to authorise the establishment of a public market or public slaughter-house within the limits of any area administered by any local authority other than the Cantonment Authority without the the permission of such local authority or otherwise than on such conditions as such local authority may approve.

Use of public market.

199. (*1*) No person shall, without the general or special permission in writing of the Cantonment Authority, sell or expose for sale any animal or article in any public market.

(*2*) Any person contravening the provisions of this section, and any animal or article exposed for sale by such person, may be summarily removed from the market by or under the orders of the Executive Officer or any officer or servant of the Cantonment Authority authorised by it in this behalf.

Levy of stallages, rents and fees.

200. A Cantonment Authority may—

(*a*) charge for the occupation or use of any stall, shop, standing, shed or pen in a public market, or public slaughter-house, or for the right to expose goods for sale in a public market or for weighing or measuring goods sold therein, or for the right to slaughter animals in any public slaughter-house, such stallages, rents and fees as it thinks fit.; or

(*b*) with the sanction of the Officer Commanding the District, farm the stallages, rents and fees leviable as aforesaid or any portion thereof for any period not exceeding one year at a time ; or

(*c*) put up to public auction, or, with the sanction of the Officer Commanding the District, dispose of by private sale, the privilege of occupying or using any stall, shop, standing, shed or pen in a public market or public slaughter-house for such term and on such conditions as it thinks fit.

Stallages, rents, etc., to be published.

201. A copy of the table of stallages, rents and fees, if any, leviable in any public market or public slaughter-house, and of the bye-laws made under this Act for the purpose of regulating the use of such market or slaughter-house, printed in the English language and in such other language or languages as the Cantonment Authority may direct, shall be affixed in some conspicuous place in the market or slaughter-house.

Private markets and slaughter-houses.

202. (*1*) No place in a cantonment other than a public market shall be used as a market, and no such place other than a public slaughter-house shall be used as a slaughter-house, unless such place has been licensed as a market or slaughter-house, as the case may be, by the Cantonment Authority :

Provided that nothing in this sub-section shall apply in the case of a slaughter-house established and maintained by the Government.

(*2*) Nothing in sub-section (*1*) shall be deemed—

(*a*) to restrict the slaughter of any animal in any place on the occasion of any festival or ceremony, subject to such conditions as to prior or subsequent notice as the Executive Officer with the previous sanction of the District Magistrate may, by public or special notice, impose in this behalf, or

(*b*) to prevent the Executive Officer, with the sanction of the Cantonment Authority, from setting apart places for the slaughter of animals in accordance with religious custom, when such animals are slaughtered for consumption by the troops or for the purpose of the sale of the flesh thereof to the troops.

(*3*) Whoever omits to comply with any condition imposed by the Executive Officer under clause (*a*) of sub-section (*2*) shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to ten rupees for every day after the first during which the offence is continued.

Conditions of grant of licence for private market or slaughter-house.

203. (*1*) A Cantonment Authority may charge such fees as it thinks fit to impose for the grant of a license to any person to open a private market or private slaughter-house in the cantonment, and may grant such licence subject to such conditions, consistent with this Act and any bye-laws made thereunder, as it thinks fit to impose.

(2) The Cantonment Authority may refuse to grant any such licence without giving reasons for such refusal.

Penalty for keeping open private market or slaughter-house without licence, etc.

204. (1) Any person who keeps open for public use any private market or private slaughter-house without obtaining a licence therefor or while the licence therefor is suspended, or after the same has been cancelled, shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first during which the offence is continued.

(2) When a licence to open a private market or private slaughter house is granted or refused or is suspended or cancelled, the Cantonment Authority shall cause a notice of the grant, refusal, suspension or cancellation to be posted in English, and in such other language or languages as it thinks necessary, in some conspicuous place by or near the entrance to the place to which the notice relates.

Penalty for using unlicensed market or slaughter-house.

205. Whoever, knowing that any market or slaughter-house has been opened to the public without a licence having been obtained therefor when such licence is required by or under this Act, or that the licence granted therefor is for the time being suspended or that it has been cancelled, sells or exposes for sale any article in such market or slaughters any animal in such slaughter-house, shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first during which the offence is continued.

Prohibition and restriction of use of slaughter-houses.

206. (1) Where, in the opinion of the Cantonment Authority, it is necessary on sanitary grounds so to do, it may, by public notice, prohibit for such period, not exceeding one month, as may be specified in the notice, or for such further period, not exceeding one month, as it may specify by a like notice, the use of any private slaughter-house specified in the notice, or the slaughter therein of any animal of any description so specified.

(2) A copy of every notice issued under sub-section (1) shall be conspicuously posted in the slaughter-house to which it relates.

Power to inspect slaughter-houses.

207. (1) Any servant of a Cantonment Authority, authorised by order in writing in this behalf by the President of the Cantonment Board, if any, or the Health Officer, may, if he has reason to believe that any animal has been, is being, or is about to be slaughtered in any place in contravention of the provisions of this Chapter, enter into and inspect any such place at any time, whether by day or by night.

(2) Every such order shall specify the place to be entered and the locality in which the same is situated and the period, which shall not exceed seven days, for which the order is to remain in force.

Power to make bye-laws.

208. A Cantonment Authority may, with the approval of the Local Government, make bye-laws consistent with this Act to provide for all or any of the following matters, namely :—

(a) the days on, and the hours during, which any private market or private slaughter-house may be kept open for use ;

(b) the regulation of the design, ventilation and drainage of such markets and slaughter-houses, and the material to be used in the construction thereof ;

(c) the keeping of such markets and slaughter-houses and lands and buildings appertaining thereto in a clean and sanitary condition, the removal of filth and refuse therefrom, and the supply therein of pure water and of a sufficient number of latrines and urinals for the use of persons using or frequenting the same ;

(*d*) the manner in which animals shall be stalled at a slaughter-house ;

(*e*) the manner in which animals may be slaughtered ;

(*f*) the disposal or destruction of animals offered for slaughter which are, from disease or any other cause, unfit for human consumption ; and

(*g*) the destruction of carcases which from disease or any other cause are found after slaughter to be unfit for human consumption.

Trades and occupation.

Provision of washing places.

209. (*1*) A Cantonment Authority may provide suitable places for the exercise by washerman of their calling, and may require payment of such fees for the use thereof as it thinks fit.

(*2*) Where the Cantonment Authority has provided such places as aforesaid it may, by public notice, prohibit the washing of clothes by washermen at any other place in the cantonment :

Provided that such prohibition shall not be deemed to apply to the washing by a washerman of his own clothes or of the clothes of any other person who is an occupier of the place at which they are washed.

(*3*) Whoever contravenes any prohibition contained in a notice issued under sub-section (*2*) shall be punishable with fine which may extend to twenty rupees.

License required for carrying on of certain occupations.

210. (*1*) No person of any of the following classes, namely :—

(*a*) butchers and vendors of poultry, game or fish ;

(*b*) persons keeping pigs for profit, and dealers in the flesh of pigs which have been slaughtered in India ;

(*c*) persons keeping milch cattle or milch goats for profit ;

(*d*) persons keeping for profit any animals other than pigs, milch cattle or milch goats ;

(*e*) dairymen, buttermen and makers and vendors of ghee ;

(*f*) makers of bread, biscuits or cake, and vendors of bread, biscuits or cake made in India ;

(*g*) vendors of fruit or vegetables ;

(*h*) manufacturers of ærated or other potable waters or of ice or ice-cream, and vendors of the same ;

(*j*) vendors of any medicines, drugs or articles of food or drink for human consumption (other than the flesh of pigs, milk, butter, bread, biscuits, cake, fruit, vegetables, ærated or other potable waters or ice or ice-cream) which are of a perishable nature ;

(*k*) vendors of water to be used for drinking purposes ;

(*l*) washermen ;

(*m*) dealers in hay, straw, wood, charcoal or other inflammable material ;

(*n*) dealers in fire works, kerosene oil, petroleum or any other inflammable oil or spirit ;

(*o*) tanners and dyers ;

(*p*) persons carrying on any trade or occupation from which offensive or unwholesome smells arise ;

(*q*) vendors of wheat, rice and other grain or of flour ; and

(*r*) makers and vendors of sugar or sweetmeats ;

shall carry on his trade, calling or occupation in any part of a cantonment unless he has applied for and obtained a license in this behalf from the Cantonment Authority.

(*2*) A license granted under sub-section (*1*) shall be valid for one year, and the grant of such license shall not be withheld by the Cantonment Authority unless it has reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to the public.

(3) Notwithstanding anything contain in sub-section (1),—

(a) no person who was, at the commencement of this Act, carrying on his trade, calling or occupation in any part of a cantonment shall be bound to apply for a licence for carrying on such trade or occupation in that part until he has received from the Cantonment Authority not less than three months' notice in writing of his obligation to do so, and if the Cantonment Authority refuses to grant him a licence, it shall pay compensation for any loss incurred by reason of such refusal;

(b) no person shall be required to take out a license for the sale or storage of petroleum or for the sale or possession for sale of poisons or white arsenic in any case in which he is required to take out a licence for such sale, storage or possession for sale by or under the Indian Petroleum Act, 1899, or the Poisons Act, 1919. VIII of 1899 XII of 1919.

(4) The Cantonment Authority may charge for the grant of licences under this section such fees as it may fix with the previous sanction of the Local Government.

Conditions which may be attached to licences.

211. A licence granted to any person under section 210 shall specify the part of the cantonment in which the licensee may carry on his trade, calling or occupation, and may regulate the hours and manner of transport within the cantonment of any specified articles intended for human consumption, and may contain any other conditions which the Cantonment Authority thinks fit to impose in accordance with bye-laws made under this Act.

General provisions.

Power to vary licence.

212. If a Cantonment Authority is satisfied that any place used under a licence granted under this Chapter is a nuisance or is likely to be dangerous to life, health or property, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier thereof to discontinue the use of such place or to effect such alterations, additions, or improvements as will, in the opinion of the Cantonment Authority, render it no longer a nuisance or dangerous.

Carrying on trade, etc., without licence or in contravention of section 212.

213. Whoever carries on any trade, profession or calling for which a licence is required without obtaining a licence therefor or while the licence therefor is suspended or after the same has been cancelled, and whoever, after receiving a notice under section 212, uses or allows to be used any building or place in contravention thereof, shall be punishable with fine which may extend to two hundred rupees and, in the case of a continuing offence, with an additional fine which may extend to forty rupees for every day after the first during which the offence is continued.

Feeding animals on dirt, etc.

214. Whoever feeds or allows to be fed on filthy or deleterious substances any animal, which is kept for the purpose of supplying milk to, or which is intended to be used as food for, the inhabitants of a cantonment or allows it to graze in any place in which grazing has, for sanitary reasons, been prohibited by public notice by the Cantonment Authority, shall be punishable with fine which may extend to fifty rupees.

Entry, Inspection and Seizure.

Powers of entry and seizure.

215. (1) The President or the Vice-President of a Board, the Executive Officer, the Health Officer, the Assistant Health Officer, or any other officer or servant of a Cantonment Authority authorised by it in writing in this behalf,—

(a) may at any time enter into any market, building, shop, stall or other place in the cantonment for the purpose of inspecting, and may inspect any animals, article or thing intended for human food or drink or for

medicine, whether exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale, or of preparation for sale, or any utensil or vessel for preparing, manufacturing or containing any such article, or thing, and may enter into and inspect any place used as a slaughter-house and may examine any animal or article therein ;

(*b*) may seize any such animal, article or thing which appears to him to be diseased or unwholesome or unfit for human food or drink or medicine, as the case may be, or to be adulterated or to be not what it is represented to be, or any such utensil or vessel which is of such a kind or in such a state as to render any article prepared, manufactured or contained therein unwholesome or unfit for human food or for medicine, as the case may be.

(*2*) Any article seized under sub-section (*1*) which is of a perishable nature may, under the orders of the Health Officer or the Assistant Health Officer, forthwith be destroyed if, in his opinion, it is diseased, unwholesome or unfit for human food, drink or medicine, as the case may be.

(*3*) Every animal, article, utensil, vessel or other thing seized under sub-section (*1*) shall, if, it is not destroyed under sub-section (*2*), be taken before a Magistrate.

(*4*) The owner or person in possession, at the time of seizure under sub-section (*1*), of any animal or carcase which is diseased or of any article or thing which is unwholesome or unfit for human food, drink or medicine, as the case may be, or is adulterated or is not what it is represented to be, or of any utensil or vessel which is of such kind or in such state as is described in clause (*b*) of sub-section (*1*), shall be punishable with fine which may extend to one hundred rupees, and the animal, article, utensil, vessel or other thing shall be liable to be forfeited to the Cantonment Authority or to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for the preparation of food, drink or medicine, as the case may be.

Explanation I.—If any such article, having been exposed or stored in, or brought to, any place mentioned in sub-section (*1*) for sale as ghee, contains any substance not exclusively derived from milk, it shall be deemed, for the purposes of this section, to be an article which is not what it is represented to be.

Explanation II.—Meat subjected to the process of blowing shall be deemed to be unfit for human food.

Explanation III.—The article of food or drink shall not be deemed to be other than what it is represented to be merely by reason of the fact that there has been added to it some substance not injurious to health, provided that—

(*a*) such substance has been added to the article because the same is required for the preparation or production thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the food or drink or conceal the inferior quality thereof, or

(*b*) in the process of production, preparation or conveyance of such article of food or drink, the extraneous substance has unavoidably become intermixed therewith, or

(*c*) the owner or person in possession of the article has given sufficient notice by means of a label distinctly and legibly written or printed thereon or therewith, or by other means of a public description, that such substance has been added, or

(*d*) such owner or person has purchased the article with a written warranty that it was of a certain nature, substance and quality and had no reason to believe that it was not of such nature, substance and quality, and has exposed it or hawked it about or brought it for sale in the same state and by the same description as that in and by which he purchased it.

Import of Cattle and Flesh.

Import of cattle and flesh.

216. (*1*) No person shall, without the permission in writing of the Cantonment Authority, bring into a cantonment any animal intended for human consumption, or the flesh of any animal slaughtered outside the cantonment otherwise than in a slaughter-house maintained by the Government or the Cantonment Authority.

(*2*) Any animal or flesh brought into a cantonment in contravention of sub-section (*1*) may be seized by the Executive Officer or by any servant of the Cantonment Authority and sold or otherwise disposed of as the Cantonment Authority may direct, and, if it is sold, the sale-proceeds may be credited to the cantonment fund.

(*3*) Whoever contravenes the provisions of sub-section (*1*) shall be punishable with fine which may extend to fifty rupees.

(*4*) Nothing in this section shall be deemed to apply to cured or preserved meat or to animals driven or meat carried through a cantonment for consumption outside thereof, or to meat brought into a cantonment by any person for his immediate domestic consumption :

Provided that the Cantonment Authority may, by public notice, direct that the provisions of this section shall apply to cured or preserved meat of any specified description or brought from any specified place.

CHAPTER XIII.

WATER SUPPLY, DRAINAGE AND LIGHTING.

Water Supply.

Maintenance of water supply.

217. (*1*) In every cantonment where a sufficient supply of pure water for domestic use is not maintained by the Government, the Cantonment Authority shall provide or arrange for the provision of such supply.

(*2*) The Cantonment Authority shall, as far as possible, make adequate provision that such supply shall be continuous through out the year and that the water shall be at all times pure and fit for human consumption.

Control over sources of public water supply.

218. (1) The Cantonment Authority may, by public notice, declare any lake, stream, spring, well, tank, reservoir or other source, whether within or without the limits of the cantonment (other than a source of water supply under the control of the Military Works Services or the Public Works Department) from which water is or may be made available for the use of the public in the cantonment to be a source of public water supply.

(*2*) Every such source shall be under the control of the Cantonment Authority.

Power to require maintenance or closing of private source of public drinking water supply.

219. The Cantonment Authority may, by notice in writing, require the owner or any person having the control of any source of public water supply which is used for drinking purposes—

(*a*) to keep the same in good order and to clear it from time to time of silt, refuse and decaying vegetation, or

(*b*) to protect the same from contamination in such manner as the Cantonment Authority may direct, or

(*c*) if the water therein is proved to the satisfaction of the Cantonment Authority to be unfit for drinking purposes, to take such measures as may be specified in the notice to prevent the public from having access to or using such water :

Provided that, in the case of a well, such person as aforesaid may, instead of complying with the notice, signify in writing his desire to be relieved of all responsibility for the proper maintenance of the well and his readiness to place it under the control and supervision of the Cantonment Authority for the use of the public, and, if he does so, he shall not be bound to carry out the requisition and the Cantonment Authority shall undertake the control and supervision of the well.

Supply of water.

220. (*1*) The Cantonment Authority may permit the owner, lessee or occupier of any building or land to connect the building or land with a source of public water supply by means of communication pipes of such size and description as it may prescribe for the purpose of obtaining water for domestic use.

(*2*) The occupier of every building so connected with the water supply shall be entitled to have for domestic use, in return for the water tax, if any, such quantity of water as the Cantonment Authority may determine.

(*3*) All water supplied in excess of the quantity to which such supply is limited under sub-section (*2*) and in a cantonment in which a water tax is not imposed, all water supplied under this section, shall be paid for at such rate as the Cantonment Authority may fix.

(*4*) The supply of water for domestic use shall not be deemed to include any supply—

(*a*) for animals or for washing vehicles where such animals or vehicles are kept for sale or hire ;
(*b*) for any trade, manufacture or business ;
(*c*) for fountains, swimming baths or any ornamental or mechanical purpose ;
(*d*) for gardens or for purposes of irrigation ;
(*e*) for making or watering roads or paths ; or
(*f*) for building purposes.

Power to require water supply to be taken.

221. If it appears to the Cantonment Authority that any building or land in the cantonment is without a proper supply of pure water, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier of the building or land to obtain from a source of public water supply such quantity of water as is adequate to the requirements of the persons usually occupying or employed upon the building or land, and to provide communication pipes of the prescribed size and description, and to take all necessary steps for the above purposes.

Supply of water under agreement.

222. (*1*) The Cantonment Authority may, by agreement, supply, from any source of public water supply, the owner, lessee or occupier of any building or land in the cantonment with any water for any purpose, other than a domestic purpose, on such terms and conditions, consistent with this Act and the rules and bye-laws made thereunder, as may be agreed upon between the Cantonment Authority and such owner, lessee or occupier.

(*2*) The Cantonment Authority may withdraw such supply or curtail the quantity thereof at any time if it should appear necessary to do so for the purpose of maintaining sufficient supply of water for domestic use by inhabitants of the cantonment.

Cantonment Authority not liable for failure of supply.

223. Notwithstanding any obligation imposed on Cantonment Authorities under this Act, a Cantonment Authority shall not be liable to any forfeiture, penalty or damages for failure to supply water or for curtailing the quantity thereof if the failure or curtailment, as the case may be, arises from accident or from drought or other unavoidable cause unless, in the case of an agreement for the supply of water under section 222, the Cantonment Authority has made express provision for forfeiture, penalty or damages in the event of such failure or curtailment.

Conditions of universal application.

224. Notwithstanding anything hereinbefore contained or contained in any agreement under section 222, the supply of water by a Cantonment Authority to any building or land shall be, and shall be deemed to have been, granted subject to the following conditions, namely :—

(*a*) the owner, lessee, or occupier of any building or land in or on which water supplied by the Cantonment Authority is wasted by reason of the pipes, drains or other works being out of repair shall, if he has knowledge thereof, give notice of the same to such officer as the Cantonment Authority may appoint in this behalf ;

(b) the Executive Officer or any other officer or servant of the Cantonment Authority authorised by it in writing in this behalf may enter into or on any premises supplied with water by the Cantonment Authority, for the purpose of examining all pipes, taps, works and fittings connected with the supply of water and of ascertaining whether there is any waste or misuse of such water;

(c) the Cantonment Authority may cut off the connection between any source of public water supply and any building or land to which water is supplied for any purpose therefrom, or turn off such supply if—

(i) the owner or occupier of the building or land neglects to pay the water tax or other charges connected with the water supply within one month from the date on which such tax or charge falls due for payment;

(ii) the occupier refuses to admit the Executive Officer or other authorised officer or servant of the Cantonment Authority into the building or land for the purpose of making any examination or inquiry authorized by clause (b) or prevents the making of such examination or inquiry;

(iii) the occupier wilfully or negligently misuses or causes waste of water;

(iv) the occupier wilfully or negligently injures or damages his meter or any pipe or tap conveying water from the water-works;

(v) any pipes, taps, works or fittings connected with the supply of water to the building or land be found on examination by the Executive Officer, to be out of repair to such an extent as to cause a waste of water;

(d) the expense of cutting off the connection or of turning off the water in any case referred to in clause (c) shall be paid by the owner or occupier of the building or land,

(e) no action taken under or in pursuance of clause (c) shall relieve any person from any penalty or liability which he may otherwise have incurred.

Supply to persons outside cantonment.

225. A Cantonment Authority may allow any person not residing within the limits of the cantonment to take or be supplied with water for any purpose from any source of public water supply on such terms as it may prescribe and may at any time withdraw or curtail such supply.

Penalty.

226. Whoever—

(a) uses for other than domestic purposes any water supplied by a Cantonment Authority for domestic use, or

(b) where water is supplied by agreement with a Cantonment Authority for a specified purpose, uses that water for any other purpose,

shall be punishable with fine which may extend to fifty rupees and the Cantonment Authority shall be entitled to recover from him the price of the water misused.

Water, Drainage and other Connections.

Power of Cantonment Authority to lay wires, connections etc.

227. A Cantonment Authority may carry any cable, wire, pipe, drain, sewer or channel of any kind,—

(a) for the purpose of carrying out, establishing or maintaining any system of water supply, lighting, drianage or sewerage, through, across, under or over any road or street, or any place laid out or intended as a road or street, or, after giving reasonable notice in writing to the owner or occupier, into, through, across, under or over any land or building, or up the side of any building, situated within the cantonment, or

(b) for the purpose of supplying water or of the introduction or distribution of outfall of water or for the removal or outfall of sewage, after giving reasonable notice in writing to the owner or occupier, into, through, across, under or over any land or building, or up the side of any building, situated outside the cantonment;

and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, sewer or channel in an effective state for the purpose for which the same may be used or is intended to be used:

Provided that no nuisance shall be caused in excess of what is reasonably necessary for the proper execution of the work:

Provided, further, that compensation shall be payable to the owner or occupier for any damage sustained by him which is directly occasioned by the carrying out of any such operation.

Wires, etc., laid above surface of ground.

228. In the event of any cable, wire, pipe, drain, sewer or channel being laid or carried above the surface of any land or through, over or up the side of any building, such cable, wire, pipe, drain, sewer or channel shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and compensation shall be payable by the Cantonment Authority in respect of any substantial interference with the right to any such enjoyment.

Connection with main not to be made without permission.

229. No person shall, for any purpose whatsoever, without the permission of the Cantonment Authority, at any time make or cause to be made any connection or communication with any cable, wire, pipe, drain, sewer or channel constructed or maintained by, or vested in, a Cantonment Authority.

Power to prescribe ferrules and to establish meters, etc.

230. A Cantonment Authority may prescribe the size of the ferrules to be used for the supply of gas, if any, and may establish meters or other appliances for the purpose of testing the quantity of any water, or the quantity or quality of any gas supplied to any premises by the Cantonment Authority.

Power of inspection.

231. The ferrules, communication pipes, connections, meters, stand-pipes and all fittings thereon or connected therewith leading from water mains or from pipes, drains, sewers or channels into any house or land, to which water or gas is supplied by a Cantonment Authority, and the pipes, fittings and works inside any such house or within the limits of any such land, shall in all cases be executed subject to the inspection and to the satisfaction of the Cantonment Authority.

Power to fix rates and charges.

232. A Cantonment Authority may fix the charges to be made for the establishment by them or through their agency of communications from, and connections with, mains, or pipes for the supply of water, or gas, or for meters or other appliances for testing the quantity or quality thereof supplied, and may levy such charges accordingly.

Application of this Chapter to Government Water Supplies.

Government water supply.

233. (1) Where in any cantonment there is a water supply under the control of the Military Works Services or the Public Works Department, the Officer of the Military Works Services or of the Public Works Department, as the case may be, in charge of such water-supply (hereinafter in this section and in section 234 referred to as the Officer) may publish in the cantonment in such manner as he thinks fit a notice declaring that any lake, stream, spring, well, tank, reservoir or other source, whether within or without the limits of the cantonment (other than a source of public water-supply under the control of the Cantonment Authority) is a source of public water-supply and may, for the purpose of keeping any such source in

good order or of protecting it from contamination or from use, require the Cantonment Authority to exercise any power conferred upon that authority by section 219.

(2) In the case of any water-supply such as is referred to in sub-section (1), the following provisions of this Chapter, namely, the provisions of sections 220, 222, 223, 224, 226, 227, 228, 229, 230, 231 and 232 shall, as far as may be, be applicable in respect of the supply of water to the cantonment, and for the purpose of such application references to the Cantonment Authority shall be construed as references to the Officer and references to the Executive Officer or other officer or servant of the Cantonment Authority shall be construed as references to such person as may be authorised in this behalf by the Officer.

Recovery of charges.

234. In any case in which the provisions of section 233 apply, the water-tax, if any, imposed in the cantonment and all other charges arising out of the supply of water which may be imposed under the provisions of this Chapter as applied by section 233 shall be recovered by the Cantonment Authority and all monies so recovered, or such proportion thereof as the Local Government may in each case determine, shall be paid by the Cantonment Authority to the Officer.

CHAPTER XIV.

REMOVAL AND EXCLUSION FROM CANTONMENTS AND SUPPRESSION OF SEXUAL IMMORALITY.

Power to remove brothels and prostitutes.

235. The Commanding Officer of a cantonment may, on receiving information that any building in the cantonment is used as a brothel or for purposes of prostitution, by order in writing setting forth the substance of the information received, summon the owner, lessee, tenant or occupier of the building to appear before him either in person or by an authorised agent, and if the Commanding Officer of the cantonment is then satisfied as to the truth of the information, he may, by order in writing, direct the owner, lessee, tenant or occupier, as the case may be, to discontinue such use of the building within such period as may be specified in the order.

Penalty for loitering and importuning for purposes of prostitution.

236. (1) Whoever in a cantonment loiters for the purpose of prostitution or importunes any person to the commission of sexual immorality, shall be punishable with imprisonment which may extend to one month or with fine which may extend to two hundred rupees.

(2) No prosecution for an offence under this section shall be instituted except on the complaint of the person importuned, or of a military officer in whose presence the offence was committed, or of a member of the Military or Air Force Police, being employed in the cantonment and authorised in this behalf by the Commanding Officer of the cantonment, in whose presence the offence was committed, or of a police officer not below the rank of a sub-inspector who is employed in the cantonment and authorised in this behalf by the Commanding Officer of the cantonment.

Removal of lewd persons from cantonment.

237. If the Commanding Officer of a cantonment is, after such inquiry as he thinks necessary, satisfied that any person residing in or frequenting the cantonment is a prostitute or has been convicted of an offence under section 236, or of the abetment of such an offence, he may cause to be served on such person an order in writing requiring him to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the Commanding Officer of the cantonment.

Removal and exclusion from cantonments of disorderly persons

238. (1) A Magistrate of the first class, having jurisdiction in a cantonment, on receiving information that any person residing in or frequenting the cantonment—

(a) is a disorderly person who has been convicted more than once of gaming or who keeps or frequents a common gaming house, a disorderly drinking shop or a disorderly house of any other description, or

(*b*) has been convicted more than once, either within the cantonment or elsewhere, of an offence punishable under Chapter XVII of the Indian Penal Code, or XLV of 1860.

(*c*) has been convicted, either within the cantonment or elsewhere, of any offence punishable under section 156 of the Army Act, or 44 and 45 Vict., c. 58.

(*d*) has been ordered under Chapter VIII of the Code of Criminal Procedure, 1898, either within the cantonment or elsewhere, to execute a bond for his good behaviour, V of 1898.

may record in writing the substance of the information received and may issue a summons to such person requiring such person to appear and show cause why he should not be required to remove from the cantonment and be prohibited from re-entering it.

(*2*) Every summons issued under sub-section (*1*) shall be accompanied by a copy of the record aforesaid and the copy shall be served along with the summons on the person against whom the summons is issued.

(*3*) The Magistrate shall, when the person so summoned appears before him, proceed to inquire into the truth of the information received and take such further evidence as he thinks fit, and if, upon such inquiry, it appears to him that such person is a person of any kind described in sub-section (*1*) and that it is necessary for the maintenance of good order in the cantonment that such person should be required to remove therefrom and be prohibited from re-entering the cantonment, the Magistrate shall report the matter to the Commanding Officer of the cantonment, and if the Commanding Officer of the cantonment so directs, shall cause to be served on such person an order in writing requiring him to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the Commanding Officer of the cantonment.

Removal and exclusion from cantonment of seditious person.

239. (*1*) If any person in a cantonment causes or attempts to cause or does any act which he knows is likely to cause disloyalty, disaffection or breaches of discipline amongst any portion of His Majesty's forces or is a person who, the Commanding Officer of the cantonment has reason to believe, is likely to do any such act, the Commanding Officer of the cantonment may make an order in writing setting forth the reasons for the making of the same and requiring such person to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the Commanding Officer of the cantonment:

Provided that no order shall be made under this section against any person unless he has had a reasonable opportunity of showing cause why the order should not be made.

(*2*) Every order made under sub-section (*1*) shall be sent to the Superintendent of Police of the district, who shall cause a copy thereof to be served on the person concerned.

(*3*) Upon the making of any order under sub-section (*1*), the Commanding Officer of the cantonment shall forthwith send a copy of the same to the Local Government.

(*4*) The Local Government may, of its own motion, and shall, on application made to it in this behalf within one month of the date of the order by the person against whom the order has been made, call upon the District Magistrate to make, after such inquiry as the Local Government may prescribe, a report regarding the justice of the order and the necessity therefor.

(*5*) The Local Government may, at any time after the receipt of a copy of an order sent under sub-section (*3*) or, where a report has been called for under sub-section (*4*), on receipt of that report, if it is of opinion that the order should be varied or rescinded, refer the case to the Governor General in Council, who shall pass such orders thereon as he thinks fit.

(*6*) Any person who has been excluded from a cantonment by an order made under this section may, at any time after the expiry of one month from the date thereof, apply to the Officer Commanding-in-Chief, the Command, for the rescission of the

same and, on such application being made, the said Officer may, after making such inquiry, if any, as he thinks necessary, either reject the application or rescind the order.

Penalty.

240. Whoever—

(*a*) fails to comply with an order issued under this Chapter within the period specified therein, or, whilst an order prohibiting him from re-entering a cantonment without permission is in force, re-enters the cantonment without such permission, or

(*b*) knowing that any person has, under this Chapter, been required to remove from the cantonment and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the cantonment,

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to ten rupees for every day after the first during which he has persisted in the offence.

CHAPTER XV.

POWERS, PROCEDURE, PENALTIES AND APPEALS.

Entry and Inspection.

Powers of entry.

241. It shall be lawful for the President or the Vice-President of a Board, or the Executive Officer, or the Health Officer or Assistant Health Officer, or any person specially authorised by the Health Officer or the Assistant Health Officer, or for any other person authorised by general or special order of a Cantonment Authority in this behalf, to enter into or upon any building or land with or without assistants or workmen in order to make any enquiry, inspection, measurement, valuation or survey, or to execute any work, which is authorised by or under this Act, or which it is necessary to make or execute for any of the purposes or in pursuance of any of the provisions of this Act or of any rule, bye-law or order made thereunder:

Provided that nothing in this section shall be deemed to confer upon any person any power such as is referred to in section 207 or section 215 or to authorise the conferment upon any person of any such power.

Powers of inspection by member of a Board.

242. With the previous sanction of the President, any member of a Board may inspect any work or institution constructed or maintained, in whole or part, at the expense of the Board, and any register, book, accounts or other document belonging to, or in the possession of, the Board.

Power of [ins]pection, etc.

243. (*1*) A Cantonment Authority may, by general or special order, authorise any person—

(*a*) to inspect any drain, privy, latrine, urinal, cesspool, pipe, sewer or channel in or on any building or land in the cantonment, and, in his discretion, to cause the ground to be opened for the purpose of preventing or removing any nuisance arising from the drain, privy, latrine, urinal, cesspool, pipe, sewer or channel, as the case may be;

(*b*) to examine works under construction in the cantonment, to take levels or to remove, test, examine, replace or read any meter.

(*2*) If, on such inspection, the opening of the ground is found to be necessary for the prevention or removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupier of the land or building, but if it is found that no nuisance exists or but for such opening would have arisen, the ground or portion of any building, drain or other work opened, injured or removed for the purpose of such inspection shall be filled in, reinstated, or made good, as the case may be, by the Cantonment Authority.

Power to enter land adjoining land where work is in progress.

244. (*1*) The Executive Officer of a cantonment may, with or without assistants or workmen, enter on any land within fifty yards of any work authorised by or under this Act for the purpose of depositing thereon any soil, gravel, stone or other materials, or of obtaining access to such work, or for any other purpose connected with the carrying on of the same.

(*2*) The Executive Officer shall, before entering on any land under sub-section (*1*), give the occupier, or, if there is no occupier, the owner not less than three days' previous notice in writing of his intention to make such entry, and shall state the purpose thereof, and shall, if so required by the occupier or owner, fence off so much of the land as may be required for such purpose.

(*3*) The Executive Officer shall, in exercising any power conferred by this section, do as little damage as may be, and compensation shall be payable by the Cantonment Authority to the owner or occupier of such land, or to both, for any such damage whether permanent or temporary.

Breaking into premises.

245. It shall be lawful for any person authorised by or under this Act to make any entry into any place, to open or cause to be opened any door, gate or other barrier—

(*a*) if he considers the opening thereof necessary for the purpose of such entry; and

(*b*) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

Entry to be made in the day time.

246. Save as otherwise expressly provided in this Act, no entry authorised by or under this Act shall be made except between the hours of sunrise and sunset.

Owner's consent ordinarily to be obtained.

247. Save as otherwise expressly provided in this Act, no building or land shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof, and no such entry shall be made without giving the said occupier or owner, as the case may be, not less than four hours' written notice of the intention to make such entry:

Provided that no such notice shall be necessary if the place to be inspected is a stable for horses or a shed for cattle, or a latrine, privy or urinal, or a work under construction.

Regard to be had to social and religious usages.

248. When any place used as a human dwelling is entered under this Act, due regard shall be paid to the social and religious customs and usages of the occupants of the place entered, and no apartment in the actual occupancy of a female shall be entered or broken open until she has been informed that she is at liberty to withdraw and every reasonable facility has been afforded to her for withdrawing.

Penalty for obstruction.

249. Whoever obstructs or molests any person employed by a Cantonment Authority, who is not a public servant within the meaning of section 21 of the Indian Penal Code or any person with whom the Cantonment Authority has lawfully contracted, in the execution of his duty or of anything which he is empowered or required to do by virtue or in consequence of any of the provisions of this Act or of any rule, bye-law or order made thereunder, or in fulfilment of his contract, as the case may be, shall be punishable with fine which may extend to one hundred rupees. XLV of 1860.

Powers and Duties of Police Officers.

Arrest without warrant.

250. Any member of the police force employed in a cantonment may, without a warrant, arrest any person committing in his view a breach of any of the provisions of this Act which are specified in Schedule IV:

Provided that—

(*a*) in the case of the breach of any such provision as is specified in Part B of Schedule IV, no person shall be so arrested who consents to give his name and address, unless there is reasonable ground for doubting the accuracy of the name or address so given, the burden of proof of which shall lie on the arresting officer, and no person so arrested shall be detained after his name and address have been ascertained; and

(b) no person shall be so arrested for an offence under section 236 except—

(i) at the request of the person importuned or of a military officer in whose presence the offence was committed ; or

(ii) by or at the request of a member of the Military or Air Force Police, being employed in the cantonment and authorised in this behalf by the Commanding Officer of the cantonment, in whose presence the offence was committed, or of any police officer not below the rank of a sub-inspector who is employed in the cantonment and authorised in this behalf by the Commanding Officer of the cantonment.

Duties of police officers.

251. It shall be the duty of all police officers to give immediate information to the Cantonment Authority of the commission of any offence against the provisions of this Act or of any rule or bye-law made thereunder, and to assist all cantonment officers and servants in the exercise of their lawful authority.

Notices.

Notices to fix reasonable time.

252. Where any notice, order or requisition made under this Act or any rule or bye-law made thereunder requires anything to be done for the doing of which no time is fixed in this Act or in the rule or bye-law, the notice, order or requisition shall specify a reasonabe time for doing the same.

Authentication and validity of notices issued by Cantonment Authority.

253. Every notice, order or requisition issued by a Cantonment Authority under this Act or any rule or bye-law made thereunder shall be signed—

(a) where there is a Board, either by the President of the Board or by the Executive Officer, or, where there is no Board, by the Executive Officer ; or

(b) by the members of any committee especially authorised by the Cantonment Authority in this behalf.

Service of notice, etc.

254. (1) Every notice, order or requisition issued under this Act or any rule or bye-law made thereunder shall, save as otherwise expressly provided, be served or presented—

(a) by giving or tendering the notice, order or requisition, or sending it by post, to the person for whom it is intended ; or

(b) if such person cannot be found, by affixing the notice, order or requisition on some conspicuous part of his last known place of abode or business, if within the cantonment, or by giving or tendering the notice, order or requisition to some adult male member or servant of his family, or by causing it to be affixed on some conspicuous part of the building or land, if any, to which it relates.

(2) When any such notice, order or requisition is required or permitted to be served upon an owner, lessee or occupier of any building or land, it shall not be necessary to name the owner, lessee or occupier therein, and the service thereof shall, save as otherwise expressly provided, be effected either—

(a) by giving or tendering the notice, order or requisition, or sending it by post, to the owner, lessee or occupier, or, if there are more owners, lessees or occupiers than one, on any one of them ; or

(b) if no such owner, lessee or occupier can be found, by giving or tendering the notice, order or requisition to the authorised agent, if any, of any such owner, lessee or occupier, or to an adult male member or servant of the family of any such owner, lessee or occupier, or by causing it to be affixed on some conspicuous part of the building or land to which it relates.

(3) When the person on whom a notice, order or requisition is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

Method of giving notice.

255. Every notice which, by or under this Act, is to be given or served as a public notice or as a notice which is not required to be given to any individual therein specified shall, save as otherwise expressly provided, be deemed to have been sufficiently given or served if a copy thereof is affixed in such conspicuous part of the office of the Cantonment Authority, or in such other public place, during such period, or is published in such local newspaper or in such other manner, as the Cantonment Authority may direct.

Powers of Cantonment Authority in case of non-compliance with notice, etc.

256. In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act, or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Cantonment Authority, whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the Cantonment Authority.

Recovery of Money.

Liability of occupier to pay in default of owner.

257. (1) If any such notice as is referred to in section 256 has been given to any person in respect of property of which he is the owner, the Cantonment Authority may require any occupier of such property or of any part thereof to pay to it, instead of to the owner, any rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under section 256:

Provided that if the occupier, on application made to him by the Cantonment Authority, refuses truly to disclose the amount of his rent or the name or address of the person to whom it is payable, the Cantonment Authority may recover from the occupier the whole amount recoverable under section 256.

(2) Any amount recovered from an occupier instead of from an owner under sub-section (1) shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been paid to the owner.

Relief to agents and trustees

258. (1) Where any person, by reason of his receiving the rent of immovable property as an agent or trustee, or of his being as an agent or trustee the person who would receive the rent if the property were let to a tenant, would under this Act be bound to discharge any obligation imposed on the owner of the property for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, funds in his hands belonging to the ower sufficient for the purpose.

(2) The burden of proving any fact entitling an agent or trustee to relief under sub-section (1) shall lie upon him.

(3) Where any agent or trustee has claimed and established his right to relief under this section, the Cantonment Authority may, by notice in writing, require him to apply to the discharge of such obligation as aforesaid the first monies which may come to his hands on behalf, or for the use, of the owner, and, on failure to comply with the notice, he shall be deemed to be personally liable to discharge the obligation.

Method of recovery.

259. All money recoverable by a Cantonment Authority under this Act shall, save as otherwise expressly provided, be recoverable either by suit or, on application to a Magistrate, by the distress and sale of the moveable property of the person from whom it is recoverable, and, if payable by the owner of any property as such, it shall, until it is paid, be a charge on the property.

Committees of Arbitration.

for a Committee of Arbitration

260. In the event of any disagreement as to the liability of a Cantonment Authority to pay any compensation under this Act, or as to the amount of any compensation so payable, the person claiming such under this Act compensation may apply to the Cantonment Authority for the reference of the matter to a Committee of Arbitration, and the Cantonment Authority shall forthwith proceed to convene a Committee of Arbitration to determine the matter in dispute.

Procedure for convening Committee of Arbitration.

261. When a Committee of Arbitration is to be convened the Cantonment Authority shall cause a public notice to be published stating the matter to be determined, and shall forthwith send copies of the order to the District Magistrate, and to the other party concerned, and shall, as soon as may be, nominate such members of the Committee as it is entitled to nominate under section 262, and, by notice in writing, call upon the other persons who are entitled to nominate a member or members of the Committee to nominate such member or members in accordance with the provisions of that section.

Constitution of Committee of Arbitration.

262. (*1*) Every Committee of Arbitration shall consist of five members, namely :—

(*a*) a Chairman who shall be a person not in the service of the Government or the Cantonment Authority, and who shall be nominated by the Commanding Officer of the cantonment;

(*b*) two persons nominated by the Cantonment Authority; and

(*c*) two persons nominated by the other party concerned, who shall be persons ordinarily resident and liable to pay taxes in the cantonment.

(*2*) If the Cantonment Authority or the other party concerned or the Commanding Officer of the cantonment fails within seven days of the date of issue of the notice referred to in section 261 to make any nomination which it or he is entitled to make or, if any member who has been so nominated neglects or refuses to act and the Cantonment Authority or other person, by whom such member was nominated, fails to nominate another member in his place within seven days from the date on which it or he may be called upon to do so by the District Magistrate, the District Magistrate shall forthwith appoint a member or members, as the case may be, to fill the vacancy or vacancies.

No person to be nominated who has direct interest and whose services are not immediately available.

263. (*1*) No person who has a direct interest in the matter under reference, or whose services are not immediately available for the purposes of the Committee, shall be nominated a member of a Committee of Arbitration.

(*2*) If, in the opinion of the District Magistrate, any person who has been nominated has a direct interest in the matter under reference, or is otherwise disqualified for nomination, or if the services of any such person are not immediately available as aforesaid, and if the Cantonment Authority or other person by whom any such person was nominated fails to nominate another member within seven days from the date on which it or he may be called upon to do so by the District Magistrate, such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 262.

Meetings and powers of Committees of Arbitration.

264. (*1*) When a Committee of Arbitration has been duly constituted, the Cantonment Authority shall, by notice in writing, inform each of the members of the fact, and the Committee shall meet as soon as may be thereafter.

(*2*) The Chairman of the Committee shall fix the time and place of meetings and shall have power to adjourn any meeting from time to time as may be necessary.

(*3*) The Committee shall receive and record evidence, and shall have power to administer oaths to witnesses, and, on requisition in writing signed by the Chairman of the Committee, the District Magistrate shall issue the necessary processes for the attendance of witnesses and the production of

documents required by the Committee and may enforce the said processes as if they were processes for attendance or production before himself.

Decisions of Committees of Arbitration.

265. (*1*) The decision of every Committee of Arbitration shall be in accordance with the majority of votes taken at a meeting at which the Chairman and at least three of the other members are present.

(*2*) If there is not a majority of votes in favour of any proposed decision, the opinion of the Chairman shall prevail.

(*3*) The decision of a Committee of Arbitration shall be final and shall not be questioned in any Court.

Prosecutions.

Prosecutions.

266. Save as otherwise expressly provided in this Act, no Court shall proceed to the trial of any offence made punishable by or under this Act, except on the complaint of, or upon information received from, the Cantonment Authority concerned or a person authorised by the Cantonment Authority by a general or special order in this behalf.

Composition of offences.

267. (*1*) A Cantonment Authority, or any person authorised by it, by general or special order in this behalf, may, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act other than an offence under Chapter XIV :

Provided that no offence shall be compoundable which is committed by failure to comply with a notice, order, or requisition issued by or on behalf of the Cantonment Authority, unless and until the same has been complied with in so far as compliance is possible.

(*2*) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

General Penalty provisions.

General penalty.

268. Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order, or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention.

Cancellation and suspension of licences.

269. Where any person to whom a licence has been granted under this Act or any agent or servant of such person commits a breach of any of the conditions thereof, or of any bye-law made under this Act for the purpose of regulating the manner or circumstances in, or the condition subject to, which anything permitted by such licence is to be or may be done, the Cantonment Authority may, without prejudice to any other penalty which may have been incurred under this Act, by order in writing, cancel the licence or suspend it for such period as it thinks fit.

Recovery of amount payable in respect of damage to cantonment property

270. Where any person has incurred a penalty by reason of having caused any damage to the property of a Cantonment Authority, he shall be liable to make good such damage, and the amount payable in respect of the damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is convicted, and, on non-payment of such amount on demand, the same shall be recovered by distress and sale of the moveable property of such person, and the Magistrate shall issue a warrant for its recovery accordingly.

Limitation.

Limitation for prosecution.

271. No Court shall try any person for an offence made punishable by or under this Act, unless complaint in respect of the same has been made to a Magistrate within six months of the commission of the offence.

Suits.

Protection of Cantonment Authority, Executive Officer, etc.

272. No suit or prosecution shall be entertained in any Court against any Cantonment Authority or authority appointed under sub-section (*2*) of section 10, or against any Commanding Officer of a cantonment, or against any member of a Board, or against any officer or servant of a Cantonment Authority, for anything in good faith done, or intended to be done under this Act or any rule or bye-law made thereunder.

Notice to be given of suits.

273. (*1*) No suit shall be instituted against any Cantonment Authority or against any member of a Board, or against any officer or servant of a Cantonment Authority, in respect of any act done, or purporting to have been done, in pursuance of this Act or of any rule or bye-law made thereunder, until the expiration of two months after notice in writing has been left at the office of the Cantonment Authority, and, in the case of such member, officer, or servant, unless notice in writing has also been delivered to him or left at his office or place of abode, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the intending plaintiff, and unless the plaint contains a statement that such notice has been so delivered or left.

(*2*) If the Cantonment Authority, member, officer or servant has, before the suit is instituted, tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered, and shall also pay all costs incurred by the defendant after such tender.

(*3*) No suit, such as is described in sub-section (*1*), shall, unless it is an action for the recovery of immoveable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(*4*) Nothing in sub-section (*1*) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit or proceeding.

Appeals and Revision.

Appeals from executive orders.

274. (*1*) Any person aggrieved by any order described in the second column of Schedule V may appeal to the authority specified in that behalf in the third column thereof.

(*2*) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fourth column of the said Schedule.

(*3*) The period specified as aforesaid shall be computed in accordance with the provisions of the Indian Limitation Act, 1908, with respect to the computation of periods of limitation IX of 1908.
thereunder.

Petition of appeal.

275. (*1*) Every appeal under section 274 shall be made by petition in writing accompanied by a copy of the order appealed against.

(*2*) Any such petition may be presented to the authority which made the order against which the appeal is made, and that authority shall be bound to forward it to the appellate authority, and may attach thereto any report which it may desire to make by way of explanation.

Suspension of action pending appeal.

276. On the admission of an appeal from an order, other than an order contained in a notice issued under clause (*a*) of section 137, section 146, section 176, or section 236, all proceedings to enforce the order and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and, if the order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

Revision.

277. (*1*) Where an appeal from an order dismissing a servant of the Cantonment Authority whose salary is not less than one hundred rupees per mensem has been disposed of by the Officer Commanding the District, the servant so dismissed may within thirty days from the date thereof apply for revision of the decision to the Officer Commanding-in-Chief, the Command, whose decision thereon shall be final.

(2) Where an appeal from an order made by the Cantonment Authority has been disposed of by the District Magistrate, the Cantonment Authority may, within thirty days from the date thereof, apply, through the Officer Commanding the District, to the Local Government, or to such authority as the Local Government may appoint in this behalf, for a revision of the decision.

(3) The provisions of this Chapter with respect to appeals shall apply, as far as may be, to applications for revision made under this section.

Finality of appellate orders.

278. Save as otherwise provided in section 277, every order of an appellate authority shall be final.

Right of appellant to be heard.

279. No appeal shall be decided under this Chapter unless the appellant has been heard, or has had a reasonable opportunity of being heard in person or through a legal practitioner.

CHAPTER XVI.

RULES AND BYE-LAWS.

Power to make rules.

280. (1) The Governor General in Council may, after previous publication, make rules to carry out the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which, and the authority to which, application for permission to occupy land belonging to Government in a cantonment is to be made;

(b) the authority by which such permission may be granted and the conditions to be annexed to the grant of any such permission;

(c) the appointment, control, supervision, suspension, removal, dismissal and punishment of servants of Cantonment Authorities;

(d) the circumstances in which security shall be demanded from servants of Cantonment Authorities and the amount and nature of such security;

(e) the grant of leave, absentee or acting allowance to servants of Cantonment Authorities;

(f) the creation and management of Provident Funds, and the circumstances in which, and the conditions subject to which, contributions thereto shall be made from cantonment funds and by servants of Cantonment Authorities;

(g) the keeping of accounts by Cantonment Authorities and the manner in which such accounts shall be audited and published;

(h) the definition of the persons by whom, and manner in which, money may be paid out of a cantonment fund;

(i) the preparation of estimates of income and expenditure by Cantonment Authorities and the definition of the persons by whom, and the conditions subject to which, such estimates may be sanctioned;

(j) the regulation of the procedure of Committees of Arbitration; and

(k) the prescribing of registers, statements and forms to be used and maintained by any authority for the purposes of this Act.

Supplemental provisions respecting rules.

281. (1) A rule under section 280 may be made either generally for all cantonments or for the whole or any part of any one or more cantonments.

(2) All rules so made shall be published in the Gazette of India and in such other manner, if any, as the Governor General in Council may direct and, on such publication, shall have effect as if enacted in this Act.

Power to make bye-laws.

282. Subject to the provisions of this Act and of the rules made thereunder, a Cantonment Authority may, in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters in the cantonment, namely:—

(*1*) the registration of births, deaths and marriages, and the taking of a census;

(*2*) the enforcement of compulsory vaccination;

(*3*) the regulation of the collection and recovery of taxes, tolls and fees under this Act and for the refund of taxes;

(*4*) the regulation or prohibition of any description of traffic in the streets;

(*5*) the manner in which vehicles standing, driven, led or propelled in the streets between sunrise and sunset shall be lighted;

(*6*) the seizure and confiscation of ownerless animals straying within the limits of the cantonment;

(*7*) the prevention and extinction of fire;

(*8*) the construction of scaffolding for building operations to secure the safety of the general public and of of persons working thereon;

(*9*) the regulation in any manner not specifically provided for in this Act of the construction, alteration, maintenance, preservation, cleaning and repairs of drains, ventilation-shafts, pipes, waterclosets, privies, latrine, urinals, cesspools and other drainage works;

(*10*) the regulation or prohibition of the discharge into, or deposit in, drains of sewage, polluted water and other offensive or obstructive matter;

(*11*) the regulation or prohibition of the stabling or herding of animals, or of any class of animals, so as to prevent danger to public health;

(*12*) the proper disposal of corpses, the regulation and management of burial and burning places and other places for the disposal of corpses, and the fees chargeable for the use of such places where the same are provided or maintained by Government or at the expense of the cantonment fund;

(*13*) the permission, regulation or prohibition of the use or occupation of any street or place by itinerant vendors or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall, and the fees chargeable for such use or occupation;

(*14*) the regulation and control of encamping grounds, pounds, washing-places, serais, hotels, dak-bungalows, lodging-houses, boarding-houses, buildings let in tenements, residential clubs, restaurants, eating-houses, cafes, refreshment-rooms and places of public recreation, entertainment or resort;

(*15*) the regulation of the ventilation, lighting, cleansing, drainage and water-supply of the buildings used for the manufacture or sale of aerated or other potable waters and of butter, milk, sweet-meats and other articles of food or drink for human consumption;

(*16*) the matters regarding which conditions may be imposed by licences granted under section 210;

(*17*) the control and supervision of places where dangerous or offensive trades are carried on so as to secure cleanliness therein or to minimise any injurious, offensive or dangerous effects arising or likely to arise therefrom;

(*18*) the regulation of the erection of any enclosure, fence, tent, awning or other temporary structure of whatsoever material or nature on any land situated within the cantonment;

(*19*) the laying out of streets, and the regulation and prohibition of the erection of buildings without adequate provisions being made for the laying out and location of streets ;

(*20*) the regulation of the use of public parks and gardens and other public places, and the protection of avenues, trees, grass and other appurtenances of streets and other public places ;

(*21*) the regulation of the grazing of animals ;

(*22*) the fixing and regulation of the use of public bathing and washing places ;

(*23*) the regulation of the posting of bills and advertisements, and of the position, size, shape or style of name-boards, signboards and sign-posts ;

(*24*) the fixation of a method for the sale of articles whether by measure, weight, piece or any other method ;

(*25*) the rendering necessary of licences within the cantonment—

(*a*) for person working as job porters for the conveyance of goods ;

(*b*) for animals or vehicles let out on hire ;

(*c*) for the proprietors or drivers of vehicles, boats or other conveyances, or of animals, kept or plying for hire ; and

(*d*) for persons impelling or carrying such vehicles or other conveyances ;

(*26*) the prescribing of the fee payable for any licence required under clause (*25*), and of the conditions subject to which such licences may be granted, revised, suspended or withdrawn ;

(*27*) the regulation of the charges to be made for the services of such job porters and of the hire of such animals, vehicles or other conveyances, and for the remuneration of persons impelling or carrying such vehicles or conveyances as are referred to in clause (*25*) ;

(*28*) the regulation or prohibition, for purposes of sanitation or the prevention of disease or the promotion of public safety or convenience, of any act which occasions or is likely to occasion a nuisance, and for the regulations or prohibition of which no provisions is made elsewhere by or under this Act ;

(*29*) the circumstances and the manner in which owners of buildings or land in the cantonment, who are temporarily absent from, or are not resident in, the cantonment, may be required to appoint as their agents, for all or any of the purposes of this Act or of any rule or bye-law made thereunder, persons residing within or near the cantonment ;

(*30*) the prevention of the spread of infectious or contagious diseases within the cantonment ;

(*31*) the segregation in, or the removal and exclusion from, the cantonment, or the destruction, of animals suffering or reasonably suspected to be suffering from any infectious or contagious disease ;

(*32*) the supervision, the regulation, conservation, and protection from injury, contamination or trespass of sources and means of public water-supply and of appliances for the distribution of water whether within or without the limits of the cantonment ;

(*33*) the manner in which connections with water-works may be constructed or maintained, and the agency which shall or may be employed for such construction and maintenance ;

(*34*) the regulation of all matters and things relating to the supply and use of water including the collection and recovery of charges therefor and the prevention of evasion of the same ;

(*35*) the maintenance of schools, and the furtherance of education generally;

(*36*) the regulation or prohibition of the cutting or destruction of trees or shrubs, or of the making of excavations, or of the removal of soil or quarrying, where such regulation or prohibition appears to the Cantonment Authority to be necessary for the maintenance of a water supply, the preservation of the soil, the prevention of land slips, the formation of ravines or torrents, the protection of land against erosion, or the deposit thereon of sand, gravel or stones;

(*37*) the rendering necessary of licences for the use of premises within the cantonment as stables or cow-houses or as accommodation for sheep, goats or fowls; and

(*38*) generally for the regulation of the administration of the cantonment under this Act.

Penalty for breach of bye-laws.

283. Any bye-law made by a Cantonment Authority under this Act may provide that a contravention thereof shall be punishable—

(*a*) with fine which may extend to one hundred rupees; or

(*b*) with fine which may extend to one hundred rupees and, in the case of a continuing contravention, with an additional fine which may extend to twenty rupees for every day during which such contravention continues after conviction for the first such contravention; or

(*c*) with fine which may extend to ten rupees for every day during which the contravention continues after the receipt of a notice from the Cantonment Authority by the person contravening the bye-law requiring such person to discontinue such contravention.

Supplemental provisions regarding bye-laws.

284. (*1*) Any power to make bye-laws conferred by this Act is conferred subject to the condition of the bye-laws being made after previous publication and of their not taking effect until they have been approved and confirmed by the Local Government and published in the local official Gazette.

(*2*) The Local Government in confirming a bye-law may make any change therein which appears to it to be necessary.

(*3*) The Local Government may, after previous publication of its intention, cancel any bye-law which it has confirmed, and thereupon the bye-law shall cease to have effect.

Rules and bye-laws to be available for inspection and purchase.

285. (*1*) A copy of all rules and bye-laws made under this Act shall be kept at the office of the Cantonment Authority and shall, during office hours, be open free of charge to inspection by any inhabitant of the cantonment.

(*2*) Copies of all such rules and bye-laws shall be kept at the office of the Cantonment Authority for sale to the public.

CHAPTER XVII.

SUPPLEMENTAL PROVISIONS.

Extension of certain provisions of the Act and rules to places beyond cantonments.

286. The Local Government may, by notification in the local official Gazette, and subject to any conditions as to compensation or otherwise which it thinks fit to impose, extend to any area beyond a cantonment and in the vicinity thereof, with or without restriction or modification, any of the provisions of Chapters IX, X, XI, XII, XIII, XIV and XV or of any rule or bye-law made under this Act for the cantonment which relates to the subject matter of any of those Chapters, and every enactment, rule or bye-law so extended shall thereupon apply to that area as if the area were included in the cantonment.

Registration.

287. (1) Paragraphs 2 and 3 of section 54, and sections 59, 107 and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment. IV of 1882

(2) Where a cantonment has not been constituted a sub-district or district for the purpose of the Indian Registration Act, 1908, under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I and II as relate to immoveable property within the cantonment to be forwarded to the Cantonment Authority annually or at such shorter intervals as the Local Government may prescribe. XVI of 1908

Validity of notices and other document.

288. No notice, order, requisition, licence, permission in writing or other such document issued under this Act shall be invalid merely by reason of any defect of form.

Admissibility of document or entry as evidence.

289. A copy of any receipt, application, plan, notice, order or other document or of any entry in a register, in the possession of a Cantonment Authority shall, if duly certified by the legal keeper thereof or other person authorized by the Cantonment Authority in this behalf, be admissible in evidence of the existence of the document or entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters.

Evidence by officer or servant of the Cantonment Authority.

290. No officer or servant of a Cantonment Authority shall, in any legal proceeding to which the Cantonment Authority is not a party, be required to produce any register or document the contents of which can be proved under section 289 by a certified copy, or to appear as a witness to prove any matter or transaction recorded therein save by order of the Court made for special cause.

Repeals.

291. The enactments mentioned in Schedule VI are repealed to the extent specified in the fourth column thereof:

Provided that licences and permits given under the Cantonments Act, 1910, and in force at the commencement of this Act, shall be deemed to have been given under this Act. XV of 1910

SCHEDULE I.

NOTICE OF DEMAND.

(*See* section 91.)

To residing at

Take notice that the Cantonment Authority demands from the sum of due from on account of (here describe the property, occupation, circumstance or thing in respect of which the sum is payable) leviable under for the period of commencing on the day of 19 , and ending on the day of 19 , and that if, within fifteen days from the service of this notice, the said sum is not paid to the Cantonment Authority at , or sufficient cause for non-payment is not shown to the satisfaction of the Executive Officer, a warrant of distress will be issued for the recovery of the same with costs.

Dated this day of 19 .

(*Signed*)

Executive Officer,

Cantonment.

SCHEDULE II.

FORM OF WARRANT.

(*See* section 92.)

(Here insert the name of the officer charged with the execution of the warrant.)

Whereas A. B. of has not paid, and has not shown satisfactory cause for the non-payment of, the sum of due on account * for the period of commencing on the day of 19 , and ending with the day of 19 , which sum is leviable under

* (Here describe the liability.)

And whereas fifteen days have elapsed since the service on him of notice of demand for the same;

This is to command you to distrain, subject to the provisions of the Cantonments Act 192 , the moveable property of the said A. B. to the amount of the said sum of Rs. ; and forthwith to certify to me together with this warrant all particulars of the property seized by you thereunder.

Dated this day of 19 .

(Signed) ,

Executive Officer,

Cantonment.

SCHEDULE III.

FORM OF INVENTORY OF PROPERTY DISTRAINED AND NOTICE OF SALE.

(*See* section 93.)

To

residing at

Take notice that I have this day seized the property specified in the inventory annexed hereto, for the value of due for the liability* mentioned in the margin for the period commencing with the day of 19 , and ending with the day of 19 , together with Rs. due for service of notice of demand and that unless within five days from the date of the service of this notice you pay to the Cantonment Authority the said amount together with the costs of recovery, the said property will be sold.

* (Here describe the liability.)

Dated this day of 19 .

(*Signature of officer executing the warrant.*)

INVENTORY.

(Here state particulars of property seized.)

SCHEDULE IV.

CASES IN WHICH POLICE MAY ARREST WITHOUT WARRANT.

(*See* section 250.)

1	2
Section	Subject.
	PART A.
115 (1) (a) (i) ...	Drunkenness, etc.
167 ...	Making or selling of food, etc., or washing of clothes, by infected person.

1	2
Section.	Subject.

PART B.

118 (1) (a) (ii) ...	Using threatening or abusive words, etc.
118 (1) (a) (iii) ...	Indecent exposure of person, etc.
118 (1) (a) (iv) ...	Begging.
118 (1) (a) (v) ...	Exposing deformity, etc.
118 (1) (a) (vii) ...	Gaming.
118 (1) (a) (xii) ...	Destroying notice, etc.
118 (1) (a) (xiii) ...	Breaking direction-post, etc.
118 (1) (f) ..	Keeping common gaming-house, etc.
118 (1) (g) ...	Beating drum, etc.
118 (1) (h) ...	Singing, etc., so as to disturb public peace or order.
119 (6) ...	Letting loose, or setting on, ferocious dog.
125 ...	Discharging fire-arms, etc., so as to cause danger.
176 (1) ...	Remaining in, or re-entering, cantonment after notice of expulsion for failure to attend hospital or dispensary.
193 (2) ...	Destroying, etc., name of street or number affixed to building.
214 ...	Feeding animal on filth, etc.
236 ...	Loitering or importuning for sexual immorality.
240 (a) ...	Remaining in, or returning to, a cantonment after notice of expulsion.

SCHEDULE V.

(See section 274.)

APPEALS FROM ORDERS.

1	2	3	4
Section	Executive Order.	Appellate Authority.	Time allowed for appeal
126	Cantonment Authority's notice to repair, protect or enclose a building, wall or anything affixed thereto, or well, tank, reservoir, pool, depression or excavation.	Officer Commanding the District.	Thirty days from service of notice
134	Cantonment Authority's notice to fill up well, tank, etc., or to drain off or remove water.	Officer Commanding the District	Thirty days from service of notice.
137	Cantonment Authority's notice to provide sufficient drainage, etc.	Officer Commanding the District.	Fifteen days from service of notice
140	Cantonment Authority's notice requiring a building to be repaired or altered so as to remove sanitary defects.	Officer Commanding the District.	Thirty days from service of notice.
176	Order of Commanding Officer of cantonment, on report of Medical Officer, directing a person to remove from the cantonment and prohibiting him from re-entering it without permission.	Officer Commanding the District.	Thirty days from service of notice.
181	Cantonment Authority's refusal to sanction the erection or re-erection of a building.	Officer Commanding the District	Thirty days from date of refusal.
185	Cantonment Authority's notice to alter or demolish a building.	Officer Commanding the District.	Thirty days from service of notice.
188	Cantonment Authority's notice to pull down or otherwise deal with a building newly erected or rebuilt without permission over a sewer, drain, culvert, water-course or water-pipe.	Officer Commanding the District	Thirty days from service of notice.
206	Cantonment Authority's notice prohibiting or restricting the use of a slaughter-house.	District Magistrate ...	Twenty-one days from service of notice.
238	Magistrate's notice directing disorderly person to remove from cantonment and prohibiting him from re-entering it without permission.	District Magistrate ...	Thirty days from service of notice.

SCHEDULE VI.

ENACTMENTS REPEALED.

(*See* section 291.)

Year.	No.	Short title.	Extent of repeal.
1910	XV	The Cantonments Act, 1910 ...	So much as has not been repealed.
1914	X	The Repealing and Amending Act, 1914	So much of the First and Second Schedules as relates to the Cantonments Act, 1910.
1919	XVIII	The Repealing and Amending Act, 1919	So much of the First Schedule as relates to the Cantonments Act, 1910
1919	XXII	The Cantonments (Amendment) Act, 1919.	The whole.

STATEMENT OF OBJECTS AND REASONS.

A Committee, which was appointed by the Government of India in January 1921 to consider what changes were necessary in order to introduce into the administration of cantonments the spirit of the reformed scheme of Government, recommended a complete revision and amalgamation of the Cantonments Act (Act XV of 1910) and the Cantonment Code, 1912, in order to bring into conformity with ordinary municipal law the system under which military cantonments are administered.

The recommendations of the Committee have now been examined by the Government of India and the conclusions arrived at are embodied in the Bill.

The main features of the Bill are as follows :-

(*a*) It is proposed to take power to municipalize the government of those cantonments which contain a substantial civil population having no essential connexion with or dependence upon the military administration. In other cantonments where these circumstances do not fully exist the administration of cantonment affairs will be vested in the hands of the Commanding Officer of the Cantonment, who, for the purposes of the Act, will be constituted a corporation sole. The general effect will be that the Cantonment Authority will cease to be the purely executive agency of Government, which it is at present. In the larger cantonments the existing Cantonment Committee will be replaced by a Cantonment Board which will be municipal in character and an essentially local self-government body.

(*b*) The reformed Cantonment Authorities will have a separate legal persona, will be capable of suing and being sued in their own name and of making contracts. They will also be empowered to make bye-laws to govern local matters of administration which require different treatment in different cantonments.

(*c*) The cantonment fund under the reformed system will be a local fund vested in the Cantonment Authority.

(*d*) In the reformed cantonments where a Board is constituted a proportion of the Cantonment Board will be elected representatives of the civil inhabitants of the cantonment. An official majority will, however, be maintained.

(*e*) The Cantonment Magistrate, as such, will be eliminated. In his place an "Executive Officer" will be appointed. He will be paid by Government. He will perform, amongst other things, the duties of Secretary of the Board, and he will have no judicial powers or functions.

(*f*) The Local Governments will exercise certain larger powers of superintendence and control over cantonment affairs than they do at present.

(*g*) The military authorities will retain certain special powers in matters affecting the health, welfare and discipline of troops.

E. BURDON.

DELHI :
The 17th March, 1923.

H. MONCRIEFF SMITH,
Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, APRIL 18, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 27th March, 1923:—

No. 16 OF 1923.

A Bill to provide for the prevention of deferred rebates and for the prevention of rate wars and resort to retaliatory or discriminating practices in the Coastal traffic of India.

WHEREAS it is expedient to provide for the growth of an Indian Merchant Marine by guaranteeing fair and healthy competition and by checking monopolies;

AND WHEREAS for this purpose it is expedient to provide for the prevention of the grant of deferred rebates to or resort to retaliatory or discriminating practices and for the prevention of rate wars by common carriers engaged in the coasting trade of British India; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Prevention of Deferred Rebates Act, 192

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "a common carrier" means a common carrier engaged in the transportation by water of passengers or property between any two ports in British India or between any port in British India and any port or place in the Continent of India;

(b) "deferred rebates" means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is paid only if, either during the period for which computed or the period of deferment or both, the shipper has complied with the terms of the rebate agreement or arrangement ;

(c) "a subject" means a person and includes a corporation, partnership or association existing under or authorised by the laws of British India or of the dominions of princes and chiefs in alliance with His Majesty ;

(d) "the coasting trade of India" means the carriage by water of goods or passengers ; and

(e) "minimum rate" means a rate which covers cost of service and includes a fair return on capital invested after meeting depreciation and other essential charges.

Prohibition of deferred rebates and discriminating agreements

3. No common carrier by water shall, directly or indirectly in respect to the coasting trade of India,—

(a) pay or allow or enter into any combination, agreement or understanding, express or implied, to pay or allow a deferred rebate to any shipper,

(b) retaliate against any shipper by refusing or threatening to refuse space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronised any other carrier or has filed a complaint charging unfair treatment or for any other reason, and

(c) make any unfair or unjust discriminatory contract with any shipper based on the volume of freight carried or unfairly treat or unjustly discriminate against any shipper in the matter of—

(1) cargo space accommodation or other facilities, due regard being had for the proper loading of the vessel and the available tonnage,

(2) the loading and landing of freight in proper condition, or

(3) the adjustment and settlement of claims.

Governor General in Council to decide whether deferred rebates or discriminating agreements have been resorted to

4. The Governor General in Council, without prejudice to the right of parties to move the Courts, upon his own initiative may, or upon complaint, shall, after due notice to all parties in interest and bearing, determine whether any person, joint stock company, corporation or association engaged in the coasting trade of India—

(1) has violated any provision of section 3, or

(2) is a party to any combination, agreement or understanding, express or implied, that involves in respect to the coasting trade of India a resort to deferred rebates and retaliatory or discriminating practices mentioned in section 3.

Power to Governor General in Council to prohibit entry into ports

5. If the Governor General in Council determines that any such person, joint stock company, corporation or association violated any such provision or is a party to any such combination, agreement or understanding, he may thereafter refuse such person, joint stock company, corporation or association the right of entry for any common carrier directly or indirectly under his or its control, into any port of British India until the Governor General in Council certifies that the violation has ceased or such combination, agreement or understanding has been terminated.

Common carrier to file copy of agreement with another common carrier

6. Every common carrier shall file immediately with the Governor General in Council a true copy or, if oral, a true and complete memorandum, of every agreement with another such carrier, or modification or cancellation thereof, to which he may be a party, or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing or destroying competition; pooling or apportioning earnings, losses or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential or co-operative arrangement.

Carrier to file scales of maximum and minimum rates

7. Every carrier shall also file with the Governor General in Council a scale of maximum and minimum rates.

Rates filed not to be departed from

8. No carrier shall depart from the scale filed in accordance with section 7, except with the approval of the Governor General in Council. Whenever the Governor-General in Council finds that any rate or fare is unjust or unreasonable, it may determine, prescribe and order the enforcement of a just and reasonable maximum and minimum scale of rates and fares.

Reduced rates not to be increased without consent of Governor General in Council

9. Whenever a carrier reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after a hearing the Governor General in Council finds that such proposed increase rests upon changed conditions other than the elimination of said competition.

Power to Governor General in Council to cancel or modify agreements

10. The Governor General in Council may by order disapprove, cancel, or modify any agreement or any modification or cancellation thereof, whether or not previously approved by him, that he finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters and importers or to operate to the detriment of the commerce of British India or to be in violation of this Act and shall approve all other agreements, modifications, or cancellations.

Penalties

11. Whoever violates any provision of this Act or refuses or fails to carry out the orders of the Governor General in Council shall be liable to a fine of not less than ten thousand rupees or simple imprisonment to a term of not less than six months, or both.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to remove some of the main obstacles that lie in the way of the development of an Indian Merchant Marine. They mainly consist of methods whereby a shipper is practically bound to confine all his shipments to vessels belonging to a particular shipping company or to the members of a shipping conference, and rate wars waged for stifling all competition by ruthless and unfair rate-cutting. Not merely is the freedom of the shipper to ship his goods by any vessel he may choose thus destroyed, but the progress of trade along desirable channels is also checked. A "disloyal" shipper is penalised by (a) refusal of space, (b) discrimination in the contract of freight, (c) the loading and landing of freight, (d) the adjustment and settlement of claims and various other discriminatory methods. It is the purpose of this Bill to do away with such practices so that an Indian Merchant Marine may grow unhampered.

T. V. SESHAGIRI AYYAR.

Dated the 27th January, 1923.

H. MONCRIEFF SMITH,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 21st March, 1923:—

No. 12 OF 1923.

A Bill for the removal of doubts regarding the right of women to be enrolled and practise as Legal practitioners.

WHEREAS it is expedient to remove certain doubts which have arisen as to the right of women to be enrolled and to practise as legal practitioners; It is hereby enacted as follows:—

Short title and extent

1. (*1*) This Act may be called the Legal Practitioners (Women) Act, 192 .

(*2*) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

Definition

2. In this Act, "legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879. XVIII of 1879

Women not to be disqualified by reason only of sex

3. Notwithstanding anything contained in any enactment in force in British India or in the letters patent of any High Court or in any rule or order made under or in pursuance of any such enactment or letters patent, no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practising as such; and any such rule or order which is repugnant to the provisions of this Act shall, to the extent of such repugnancy, be void.

STATEMENT OF OBJECTS AND REASONS.

The Letters Patents of the several High Courts empower them to admit proper persons as Advocates, Vakils and Attorneys, and to make rules for their qualification and admission. Sections 6 and 17 of the Legal Practitioners Act, 1879, similarly give powers to the High Courts and the Chief Controlling Revenue-authorities to make rules for the qualification and admission of persons as Pleaders and Mukhtars, and as Revenue Agents, respectively. Sections 6 and 31 of the Bombay Pleaders Act, 1920 (Bombay Act XVII of 1920) contain similar provisions as regards Pleaders in that Presidency. Conflicting decisions have been given by High Courts as to the right of women, who are otherwise qualified, to be enrolled and to practise as legal practitioners.

The Government of India consulted Local Governments and other authorities on the question of whether women should be as eligible as men to enter upon a career as legal practitioners. The general opinion expressed was that in the present conditions of India, this question should be decided by Indian opinion. An opportunity of obtaining the views of the Assembly upon the question arose in connection with the motion moved by Dr. H. S. Gour for the reference of his Bill further to amend the Legal Practitioners Act, 1879, to a Select Committee. During the course of the debate upon that Resolution, it was indicated that the acceptance of the motion by the Assembly would be regarded as an acceptance of the principle that no woman shall, by reason only of her sex, be disqualified from being admitted or being enrolled as a legal practitioner, or from practising as such in any court of law. The motion was accepted and in accordance with the undertaking given in the course of the debate on the motion the present Bill has been prepared to give effect to this view.

W. M. HAILEY.

The 7th March, 1923.

H. MONCRIEFF SMITH,
Secretary to the Government of India.



The Calcutta Gazette

WEDNESDAY, JULY 25, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly, and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly :—

A Bill further to amend the Indian Limitation Act, 1908.

WHEREAS it is expedient further to amend the Indian Limitation Act, 1908; It is hereby enacted as follows :— IX of 1908.

Short title.

1. This Act may be called the Indian Limitation (Amendment) Act, 192 .

Amendment of section 19, Act IX of 1908.

2. In section 19 of the Indian Limitation Act, 1908 (hereinafter referred to as the said Act), the following amendments shall be made, namely :— IX of 1908

(*a*) In sub-section (*1*), for the words "an acknowledgment" the words "a clear and unconditional acknowledgment" shall be substituted, and for the words "signed by" the words "signed and dated by" shall be substituted;

(*b*) Sub-section (*2*) shall be omitted;

(*c*) Explanation I shall be omitted; and

(*d*) for Explanation II the following shall be substituted, namely :—

"*Explanation II.*—For the purposes of this section 'signed' means signed either personally or by an agent duly authorised in writing in this behalf."

Amendment of section 20, Act IX of 1908.

3. (a) For sub-section (1) of section 20 of the said Act, the following shall be substituted, namely :—

"Where anything is paid either as interest or part of the principal of a debt or legacy before the prescribed period by the debtor or by his agent duly authorised in writing in this behalf, the entry as to such payment being signed and dated by the payer, a fresh period of limitation shall be computed from the date of payment."

(b) Sub-section (2) of the same section shall be omitted.

Amendment of section 21, Act IX of 1908.

4. In sub-section (1) of section 21 of the said Act, after the word "authorised" wherever it occurs, the words "in writing" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The object of the proposed amendments is to decrease litigation, perjury, forgery and fraud. At present many facts are required to be proved by oral evidence which the Courts may or may not believe and the result is always uncertain.

Under the proposed amendment, a clear and unconditional acknowledgment duly signed and dated by the person liable or by his agent duly authorized in writing will be required to extend time. Debtors should not be taken by surprise by an ambiguous or undated writing which might be used to extend the period of limitation.

In section 20, there is always a dispute whether the payment was made on account of interest as such. Under the amended section, part payment of principal and payment of interest have been placed on equal footing. Similar amendment has been made in section 21. Authority of an agent to extend time under any of the sections referred to in this Bill must always be in writing and not oral.

I hope the proposed amendments, if passed into law, will considerably reduce litigation and the multiplicity of witnesses will be avoided.

GIRDHARILAL AGARWALA, M.L.A.

Dated the 7th December, 1922.

L. GRAHAM,
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 2nd July, 1923:—

No. 24 OF 1923.

A Bill further to amend the Indian Income-tax Act, 1922, for certain purposes.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for certain purposes hereinafter appearing; It is hereby enacted as follows:— XI of 1922.

Short title.

1. This Act may be called the Indian Income-tax (Further Amendment) Act, 1923.

Amendment of section 4, Act XI of 1922.

2. In sub-section (*2*) of section 4 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), for the words "shall be deemed to be profits and gains of the year in which they are received or brought into British India," the following words shall be substituted, namely:— XI of 1922

"shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be profits and gains of the year in which they are so received or brought."

Insertion of new Chapter VA in Act XI of 1922.

3. After Chapter V of the said Act the following Chapter shall be inserted, namely:—

"CHAPTER VA.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

Liability to tax of occasional shipping.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Return of profits and gains.

44B. (*1*) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(*2*) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (*1*), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

Adjustment. **44C.** Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be."

STATEMENT OF OBJECTS AND REASONS.

Some doubt has been expressed whether sub-section (2) of section 4 of the Indian Income-tax Act, 1922, fully secures the intention of the Act that the profits and gains of a business accruing or arising out of British India to a person resident in British India should be assessed when received in, or brought into, British India. Clause 2 of the Bill is intended to place the matter beyond dispute.

2. Difficulties have arisen in the assessment to income-tax of occasional shipping belonging to, or chartered by, persons or companies whose principal place of business is not in British India and who have no regular agents in India from whom the tax will be recoverable in the following year. Clause 3 of the Bill accordingly makes special provision for the assessment of the profits and gains of such shipping.

BASIL P. BLACKETT.

SIMLA, *the 18th June, 1923.*

L. GRAHAM,
Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, AUGUST 15, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 2nd July 1923:—

No. 20 OF 1923.

A

BILL

further to amend the Code of Civil Procedure, 1908, for certain purposes.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908, for certain purposes hereinafter appearing; It is hereby enacted as follows: V of 1908

Short title — **1.** This Act may be called the Code of Civil Procedure (Amendment) Act, 1923.

Amendment of section 60, Act V of 1908 — **2.** In clause (*i*) of sub-section (*1*) of section 60 of the Code of Civil Procedure, 1908, for the word "twenty," wherever it occurs, the word "forty," and for the word "forty" the word "eighty" shall be substituted. V of 1908

STATEMENT OF OBJECTS AND REASONS.

Under proviso (*i*) of sub-section (*1*) of section 60 of the Code of Civil Procedure, 1908, the salary or allowances of public officers and servants of railway companies and local authorities while on duty are protected from attachment in execution of decrees to the extent of—

(1) the whole of the salary, where the salary does not exceed Rs. 20 a month;
(2) Rs. 20 monthly, where the salary exceeds Rs. 20, but does not exceed Rs. 40, a month, and
(3) one moiety of the salary in any other case.

It is considered that the amount of salary immune from attachment should be raised proportionately to the rise in the cost of living on the ground that, when the Code was drafted in 1908, the initial pay of Government servants in almost all Departments was low compared with the present rates. It is, therefore, proposed that the limits of Rs. 20 and Rs. 40 in (1) and (2) above should be raised to Rs. 40 and Rs. 80, respectively.

SIMLA;
The 16th June, 1923.

W. M. HAILEY.

L. GRAHAM.
Secretary to the Government of India (offg.).

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 2nd July 1923 :—

NO. 21 OF 1923.

A

BILL

further to amend the Code of Criminal Procedure, 1898, for certain purposes.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, for certain purposes hereinafter appearing; It is hereby enacted as follows :— V of 1898

Short title and commencement.

1. (*1*) This Act may be called the Code of Criminal Procedure (Second Amendment) Act, 1923.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint.

Amendment of section 364, Act V of 1898

2. In section 364 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code),— V of 1898

(*a*) in sub-section (*3*) the words "unless he is a Presidency Magistrate," shall be omitted; and

(*b*) in sub-section (*4*), for the words and figures "or section 362, sub-section (*2A*)" the following shall be substituted, namely :—

"or in the course of a trial held by a Presidency Magistrate."

Substitution of new section for section 388, Act V of 1898

3. For section 388 of the said Code the following section shall be substituted, namely :—

Suspension of execution of sentence of imprisonment.

"388. (*1*) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(*a*) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(*b*) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and, if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment."

Amendment of section 562, Act V of 1898

4. After sub-section (1) of section 562 of the said Code the following sub-section shall be inserted, namely:—

Conviction and release with admonition

"(1A) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition." XLV of 1860.

Amendment of Schedule V, Act V of 1898.

5. In Schedule V to the said Code, in Form XXXVIIA,—

(a) the words "until the day of " shall be omitted; and

(b) for the words "on that day;" and for the words "on the said day of next," and for the words "on the day of next;" the words "on the following date (or dates), namely:— " shall be substituted.

Repeal

6. Sections 98 and 104 of the Code of Criminal Procedure (Amendment) Act, 1923, are hereby repealed. XVIII 1923.

STATEMENT OF OBJECTS AND REASONS.

Section 97 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923), inserts a new sub-section (2A) in section 362 of the Code of 1898, requiring a Presidency Magistrate in appealable cases to make a memorandum of the substance of the examination of the accused person, which shall be signed by him and shall form part of the record, and new sub-section (4) lays down that in non-appealable cases it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge. Section 98 of the Act of 1923 inserts the words and figures "or section 362, sub-section (2A)" after the figures "263" in sub-section (4) of section 364 of the Code. The last amendment, which was introduced by the Joint Committee who reported on the Bill which passed into law as Act XVIII of 1923, was considered to be purely consequential upon the insertion of new sub-section (2A) in section 362. The effect of this amendment is that, while new sub-section (2A) has imposed an additional formality in connection with the examination of an accused person by a Presidency Magistrate in appealable cases, the formalities attending such examination have been materially relaxed in another respect; and that a memorandum of the substance of the evidence has been regarded as sufficient in appealable cases, while a full record in the form of question and answer is required in non-appealable cases. The Joint Committee did not intend that the amendments introduced would have this effect. It is accordingly proposed to remove these anomalies and to make it clear that, in cases where an appeal lies, the Presidency Magistrate shall take down a memorandum of the examination of the accused person as already provided in new sub-section (2A) of section 362, and that in non-appealable cases no record of the examination of the accused need be made. Clause 2 of this Bill gives effect to this.

2. The object of clauses 3 and 4 of the Bill is to give effect to some of the recommendations made by the Indian Jails Committee in paragraphs 438, 439 and 440 of their Report. These follow generally the lines of their recommendations, and opportunity has been taken to remodel the provisions of section 388 of the Code of Criminal Procedure.

SIMLA;
The 25th June, 1923.

W. M. HAILEY.

L. GRAHAM,
Secretary to the Government of India (offg.).



The Calcutta Gazette

WEDNESDAY, AUGUST 22, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 11th July 1923:—

No. 27 of 1923.

A Bill further to amend the Indian Lunacy Act, 1912.

WHEREAS it is expedient further to amend the Indian Lunacy Act, 1912; It is hereby enacted as follows:— IV of 1912.

Short title. **1.** This Act may be called the Indian Lunacy (Amendment) Act, 1923.

Amendment of section 20, Act IV of 1912. **2.** To section 20 of the Indian Lunacy Act, 1912, the following proviso shall be added, namely:— IV of 1912.

"Provided that no reception order shall continue to have effect—

(*a*) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(*b*) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed."

STATEMENT OF OBJECTS AND REASONS.

It has been brought to notice that as the Indian Lunacy Act, 1912, stands at present, a person, once the subject of a reception order for detention in a mental hospital, remains permanently subject to it, and can be taken to a mental hospital and confined therein legally at any subsequent period of his life, notwithstanding that the order may not have been acted on for a considerable period after being made or that the person may have been discharged from such a hospital as recovered from the mental disorder which occasioned the issue of the order. This was never the intention of the law, and in practice the defect has never caused any miscarriage of justice, but a flaw undoubtedly exists and it is considered desirable to remove it. The Bill proposes to remedy the defect by amending section 20 of the Act so as to render a reception order inoperative after 30 days if it has not been acted upon or, if it has been acted upon within that period, after the discharge of the person to whom it relates from the detention authorised by it.

W. M. HAILEY.

The 9th July 1923.

L. GRAHAM,
Secretary to the Government of India (offg.).



The Calcutta Gazett

WEDNESDAY, SEPTEMBER 5, 1923.

PART VI.

Bills introduced in the Council of State and Legislative Assem Reports of Select Committees presented to the Council Assembly and Bills published under Rule 18 of the Indian Le lative Rules.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 19th 1923:

A

BILL

to consolidate and amend the Law relating to Legal Practitioners in India.

WHEREAS it is expedient to consolidate and amend the Law relating to Legal Practitioners in India and to empower the Government of India and the Local Governments to establish General Bar Councils in each province; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Legal Practitioners Act, 192 .

(*2*) It shall come into force on the first day of January, 1924.

(*3*) It shall extend to the whole of British India except to the extent to which the Governor General in Council may by notification exempt from the operation of this Act.

Repeal of enactments and saving of rules, etc.

2. (*1*) On and from the first day of January, 1924, the enactments mentioned in the First Schedule hereto annexed shall be repealed to the extent specified therein.

(2) All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment or charter hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

(3) All references made to any enactment or Charter hereby repealed in any Act, Charter or Regulation passed, or notification published shall be read as if made under the corresponding provisions of this Act.

Interpretation clause

3. In this Act, unless there is anything repugnant in the subject or context,—

(*i*) 'High Court' means a Chartered High Court and includes any other High Court or Chief Court declared by the Governor General in Council to be a High Court for the purposes of this Act;

(*ii*) 'Judge' means the presiding Judicial Officer in every Civil and Criminal Court by whatever title he is designated;

(*iii*) 'subordinate Court' means all Courts subordinate to the High Court including Courts of Small Causes, established under Act No. IX of 1850 or Act No. XI of 1865 or Act No. IX of 1887;

(*iv*) 'revenue office' includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents;

(*v*) 'Advocate-General' includes the Senior Government Advocate or Pleader practising in the High Court;

(*vi*) 'Legal Practitioner' means an Advocate or Vakil called to the Bar or enrolled under the provisions of this Act; and

(*vii*) 'Pleader' means an Advocate or Vakil or Attorney of a High Court and includes Pleaders and Mukhtiars practising or entitled to practise under the Legal Practitioners Act, 1879, as on the thirty-first XVII of 1879.
day of December, 1923, but does not include a person who has been admitted either as an Advocate or Vakil under the provisions of this Act.

CHAPTER II.

THE GENERAL BAR COUNCILS AND DISTRICT BAR COUNCILS.

Constitution of the General Bar Council.

4. (1) The Local Governments in provinces where there is a High Court shall, immediately on the passing of this Act, establish at the Headquarters of the High Court of their respective provinces a General Bar Council which shall include three Judges of the High Court including the Chief Justice or Chief Judge, the Advocate-General and sixteen non-official members being Advocates or Vakils or Attorneys of the High Court and practising in the High Courts.

(2) In provinces where no High Court is established the Government of India may authorise the General Bar Council of an adjoining province to exercise jurisdiction in and to act as General Bar Council of that province also.

(3) The non-official members appointed to the General Bar Council shall hold office for a period of four years.

(4) All vacancies in the office of the General Bar Council shall be filled up by election by the Advocates of the High Court of that province in accordance with the rules framed on that behalf by the 1st Council.

(5) The Chief Justice or the Chief Judge of the High Court and the Advocate-General shall be *ex-officio* members of the General Bar Council.

(6) The Local Government shall appoint two Judges of the High Court to be members of the General Bar Council and the Judges so appointed shall hold office for four years.

Appointment of District Bar Council.

5. The General Bar Council shall appoint District Bar Councils at the Headquarters of a District Judge which shall consist of the District Judge, the senior Subordinate Judge of the District, the Government Pleader and seven other legal practitioners or pleaders to be chosen from amongst those practising in the District. It shall be the duty of the District Council to act under the orders of the General Bar Council in all matters affecting the profession and to report to the General Bar Council all matters affecting the profession.

Saving of existing rights.

6. Notwithstanding anything contained in this Act or in the rules framed thereunder every person entered as a Vakil, Advocate or Attorney on the roll of any High Court as on the thirty-first of December, 1923, shall be entitled to continue to practise in any Court or revenue office in the same manner and under the same conditions and with the same rights and privileges as to acting and pleading as they exist under the laws, rules and regulations now in force or to be in force on the 31st December, 1923.

Enrolling Authority.

7. On and from the first day of January, 1924, the authority to admit and enrol persons to practise in courts in British India shall vest in the General Bar Council of the province. The Bar Council may, subject to such regulations and rules as it may pass from time to time, call to the Indian Bar persons qualified to be so called as Advocates of the High Court and in provinces where the local Legislature so desires by a Resolution carried in the Council, also enrol persons qualified to be enrolled as Vakils.

Admission of Advocates.

8. Advocates called to the Indian Bar by the General Bar Council of a province shall be entitled to practise and act or plead in the High Court and all the Courts subordinate thereto in that province and in all revenue offices situated in the local jurisdiction of that Court subject nevertheless to such rules and regulations as may be prescribed by the General Bar Council. They shall also be entitled to practise in any other Court or revenue office in British India with the permission of the General Bar Council of that province either generally or specially given and subject to such rules and regulations as that Council may, by general or special rule, prescribe.

Admission of Vakils.

9. Vakils enrolled under the provisions of this Act by the General Bar Council of a province shall be entitled to practise and act or plead in all the Courts subordinate to the High Court of that province and in all the revenue offices situated within the local limits of the appellate jurisdiction of the High Court of that province.

Admission of Vakils, Attorneys and Advocates to the Indian Bar.

10. Every person who is entered as a Vakil, Attorney, or Advocate of any Chartered High Court shall be entitled to be called to the Indian Bar as an Advocate under the provisions of this Act subject to the payment of such fees as may be prescribed by the General Bar Council. All Pleaders and Mukhtiars may, on the recommendation of the District Bar Council, be enrolled as Vakil by the General Bar Council subject to the payment of such fees as may be prescribed.

Admission of Barristers, Solicitors, etc., to Indian Bar.

11. Barristers of England or the members of the Faculty of Advocates in Scotland and Attorneys or Solicitors of His Majesty's High Courts in England are also entitled to be called to the Indian Bar as Advocates subject to the conditions and payments of such fees as may be prescribed by the General Bar Council.

None except a legal practitioner or pleader to practise.

12. No person who is not a legal practitioner or pleader within the meaning of this Act shall practise in any Court or revenue office in British India. Nothing herein contained shall affect the right of a party or his specially authorised agent to conduct his own case.

CHAPTER III.

POWERS OF THE GENERAL BAR COUNCIL.

The General Bar Council to be the representative body.

13. The General Bar Council shall be the accredited representative of the Bar of the province and its duty is to deal with all matters affecting the profession and to take such action thereon as may be deemed expedient. The various Bar Councils shall act together in matters affecting their common interests, under such rules as may be laid down by the Government of India.

Power of the General Bar Council to make rules

14. The General Bar Council of a province may, from time to time, make rules consistent with the provisions of this Act, and with the principle contained in section 96 of the Government of India Act, 1915, in respect of the following matters:— 5 and 6 Geo. 5, c. 61.

(*a*) The qualifications, admissions, calling, enrolment and certificate of proper persons to be Advocates or Vakils for the purposes of this Act and without any limitation as to the number called or enrolled.

(*b*) The fees to be paid for the examination, calling, enrolment and admission of such persons.

(*c*) The removal, suspension of legal practitioners and the procedure relating to the inquiry of professional misconduct and generally to consider profession, conduct, etiquette and all other matters of disciplinary jurisdiction.

(*d*) Appointment of Advocates and Vakils by the parties and fees payable to them.

(*e*) Defining the functions of the District Bar Council and regulating their procedure and generally to carry out the purposes of this Act.

Bar Councils corporate bodies

15. The General Bar Council and the District Bar Council shall respectively be body corporate.

Appointment of Board of Examiners

16. To facilitate the ascertainment of the qualifications of persons to be called to the Indian Bar or enrolled as Vakils, the Bar Council shall from time to time appoint persons to form a Board of Examiners and may from time to time make regulations for conducting such examinations.

Committees.

17. The General Bar Council may also appoint from among its own members a Committee of not less than 3 and not more than 7 for disciplinary purposes.

Appointment of officers.

18. The General Bar Council may, subject to the approval of the Local Government, appoint such officers, clerks and servants as they may deem fit and to prescribe their respective duties.

Power of High Court over legal practitioners.

19. Nothing herein contained shall affect the power of the High Court to exercise its disciplinary jurisdiction over all legal practitioners and pleaders and such jurisdiction may be exercised subject to the procedure prescribed by the rules made by the High Court.

Appeal against decisions of General Bar Council.

20. An appeal shall lie to the High Court against the decisions of the General Bar Council either disbarring or suspending a legal practitioner.

Penalties.

21. Any person not being a legal practitioner or pleader who practises as such in any Court or revenue office shall be liable to a fine not exceeding one thousand rupees.

THE SCHEDULE.

(SEE SECTION 2.)

Enactments repealed.

Year.	No.	Short title.	Extent of repeal.
		Acts of the Governor General in Council.	
1879	XVIII	The Legal Practitioners Act, 1879 ...	The whole.
1908	V	The Code of Civil Procedure, 1908 ...	Order III, Rule IV.
		Bombay Act.	
1920	XVII	The Bombay Pleaders Act, 1920 ...	The whole.
		Letters Patent of the Chartered High Courts.	
		Letters Patent of the High Court of Judicature at Fort William in Bengal.	Clause 9
		Letters Patent of the High Court of Judicature at Madras.	Clause 9.
		Letters Patent of the High Court of Judicature at Bombay.	Clause 9.
		Letters Patent of the High Court of Judicature at Allahabad.	Clause 7.
		Letters Patent of the High Court of Judicature at Patna.	Clause 7.
		Letters Patent of the High Court of Judicature at Lahore.	Clause 7.
		Letters Patent of the High Court of Judicature at Rangoon.	Clause 7.

STATEMENT OF OBJECTS AND REASONS.

It has been the long felt desire of the legal profession in India in all its branches to reorganize the legal profession of the country to secure a self-contained and unified independent Indian Bar functioning in the same manner as the sister organizations of Great Britain and the United States. With this object Munshi Iswar Saran brought a Resolution in the Legislative Assembly on the 24th February, 1921, requesting the Government to undertake legislation to remove all distinctions enforced by Statute or by practice between the several branches of the legal profession and the Honourable the Law Member on behalf of the Government was prepared to be guided by definite public opinion in the matter and accordingly undertook to make reference to the Local Governments, High Courts and local bodies in India, and a motion to that effect was accepted by the Assembly. Sufficient time has since elapsed and it is therefore necessary to focus legal public opinion in the matter. The object of the Bill is to create one Indian Bar, and only where the circumstances of a province require it, but not otherwise, another for the mofussil districts and at the same time to secure for the profession one single self-contained representative body with powers of enrolment and discipline and regulation of professional conduct and other matters connected therewith.

T. RANGACHARIAR.

Dated the 22nd July, 1922.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of State on the 27th July, 1923:—

A

BILL

to consolidate the law applicable to intestate and testamentary succession in British India.

WHEREAS it is expedient to consolidate the law applicable to intestate and testamentary succession in British India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be called the Indian Succession Act, 192 . Section 1, Act X of 1865.

Definitions. **2.** In this Act, unless there is anything repugnant in the subject or context,— Section 3, Act X of 1865.

(*a*) "administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;

(*b*) "codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will;

(*c*) "executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided;

(*d*) "Indian Christian" means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion; Section 2, Act VII of 1901.

IX of 1875. (*e*) "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and "minority" means the status of any such person; IX of 1875. Section 3, Act V of 1881.

(*f*) "probate" means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator; and

(*g*) "will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

Power of Local Government to exempt any race, sect or tribe in the territories administered by the Local Government from operation of Act. **3.** (*1*) The Local Government may, by notification in the local official Gazette, either retrospectively from the passing of this Act or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 4, 6 to 45, 53 to 55, 57 to 190, 210, 211 and 213 to 369, the members of any race, sect or tribe in the province, or of any part of such race, sect or tribe, to whom the Local Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order. Section 332, Act X of 1865.

(*2*) The Local Government may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect. Section 2, Schedule I, Act XXXVIII of 1920.

(*3*) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 1865, under section 332 of that Act are in this Act referred to as "exempted persons." X of 1865.

Interests and powers not acquired nor lost by marriage.

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried: Section 4, Act X of 1865.

Provided that this section—

(1) shall not apply to any marriage contracted before the first day of January, 1866; Section 331, Act X of 1865.

(2) shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion. Section 2, Act III of 1874.

PART II.

OF DOMICILE.

Application of Part.

5. This Part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina. Section 331, Act X of 1865.

Law regulating succession to deceased person's immoveable and moveable property, respectively.

6. (*1*) Succession to the immoveable property in British India of a person deceased shall be regulated by the law of British India, wherever such person may have had his domicile at the time of his death. Section 5, Act X of 1865.

(*2*) Succession to the moveable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Illustrations.

(*a*) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(*b*) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

One domicile only affects succession to moveables.

7. A person can have only one domicile for the purpose of the succession to his moveable property. Section 6, Act X of 186

Domicile of origin of person of legitimate birth.

8. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death. Section 7, Act X of 1865

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

9. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled. Section 8, Act X of 1865

Continuance of domicile of origin.

10. The domicile of origin prevails until a new domicile has been acquired. Section 9, Act X of 1865

Acquisition of new domicile.

11. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin. Section 10, Act X of 1865.

Explanation.—A man is not to be deemed to have taken up his fixed habitation in British India merely by reason of his residing there in His Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(*a*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*b*) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(*c*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the Government of India for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*e*) A, having gone to reside in British India in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f*) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*) A, having come to Calcutta in the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

12. Any person may acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Local Government, a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in British India for one year immediately preceding the time of his making such declaration. Section 11, Act X of 1865.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

13. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant. Section 12, Act X of 1865.

Continuance of new domicile.

14. A new domicile continues until the former domicile has been resumed or another has been acquired. Section 13, Act X of 1865.

Minor's domicile.

15. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin. Section 14, Act X of 1865.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of His Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

16. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before. Section 15, Act X of 1865.

Wife's domicile during marriage.

17. A wife's domicile during her marriage follows the domicile of her husband. Section 16, Act X of 1865.

Exception.—The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

18. Save as hereinbefore otherwise provided in this Part a person cannot, during minority, acquire a new domicile. Section 17, Act X of 1865.

Lunatic's acquisition of new domicile.

19. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person. Section 18, Act X of 1865.

Succession to moveable property in British India in absence of proof of domicile elsewhere

20. If a person dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India. Section 19, Act X of 1865.

PART III.

INTESTATE SUCCESSION.

CHAPTER I.

Preliminary.

Application of Part

21. (*1*) This Part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina. Sections 2 and 331, Act X of 1865

(*2*) Save as provided in sub-section (*1*) or by any other law for the time being in force, the provisions of this Part shall constitute the law of British India in all cases of intestacy. Section 8, Act XXI of 1865

As to what property deceased considered to have died intestate.

22. A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect. Section 25, Act X of 1865.

Illustrations.

(*a*) A has left no will. He has died intestate in respect of the whole of his property.

(*b*) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d*) A has bequeathed 1,000 rupees to B and 1,000 rupees to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 rupees and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000 rupees.

CHAPTER II.

RULES IN CASES OF INTESTATES OTHER THAN PARSIS.

Of Consanguinity.

Chapter not to apply to Parsis.

23. Nothing in this Chapter shall apply to Parsis. Section 8, Act XXI of 1865.

Kindred or consanguinity.

24. Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor. Section 20, Act X of 1865.

Lineal consanguinity.

25. (*1*) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line. Section 21, Act X of 1865.

(*2*) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.

Collateral consanguinity

26. (1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. Section 22, Act X of 1865.

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree being allowed for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to deceased.

27. For the purpose of succession, there is no distinction— Section 23, Act X of 1865

(a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or

(b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or

(c) between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Mode of computing of degrees of kindred.

28. Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule I. Section 24, Act X of 1865.

Illustrations.

(a) The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin german; making in all four degrees.

(b) A grandson of the brother and a son of the uncle, i.e., a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

(c) A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

Devolution of such property

29. The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter. Section 26, Act X of 1865.

Explanation.—A widow is not entitled to the provision hereby made for her if, by a valid contract made before her marriage, she has been excluded from her distributive share of her husband's estate.

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

30. Where the intestate has left a widow— Section 27, Act X of 1865.

(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;

(b) if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules hereinafter contained;

(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where intestate has left no widow and where he has left no kindred.

31. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and if he has left none who are of kindred to him, it shall go to the Crown.

Section 28, Act X of 1865

Rules of distribution.

32. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 33 to 36.

Section 29, Act X of 1865.

Where intestate has left child or children only.

33. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.

Section 30, Act X of 1865.

Where intestate has left no child, but grandchild or grandchildren

34. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is only one, or shall be equally divided among all his surviving grandchildren.

Section 31, Act X of 1865

Illustrations.

(*a*) A has three children, and no more, John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one ninth.

(*b*) But if Henry has died, leaving no child then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c*) A has two children, and no more, John and Mary John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and the posthumous child

Where intestate has left only great-grandchildren or remoter lineal descendants.

35. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him or are all in a more remote degree.

Section 32, Act X of 1865

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.

36. (*1*) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

Section 33, Act X of 1865

(*2*) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(*a*) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild, and the remaining one-ninth is equally divided between the two great-grandchildren.

(c) A has three children, John, Mary and Henry ; John dies leaving four children ; and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry, one-third to Mary's child, and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

Rules of distribution where intestate has left no lineal descendants

37. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in sections 38 to 44. Section 31, Act X of 1865

Where intestate's father living

38. If the intestate's father is living, he shall succeed to the property. Section 35, Act X of 1865.

Where intestate's father dead, but his mother, brothers and sisters living

39. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares. Section 36, Act X of 1865

Illustration

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother but not of his father. The mother takes one-fourth, each brother takes one-fourth and Mary, the sister of half blood, takes one-fourth.

Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister living.

40. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. Section 37, Act X of 1865

Illustration.

A, the intestate, leaves his mother, his brothers, John and Henry, and also one child of a deceased sister, Mary, and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each takes one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth qeually between them.

Where intestate's father dead, and his mother and children of any deceased brother or sister living.

41. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. Section 38, Act X of 1865.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister, Mary, and two children of a deceased brother, George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.

42. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother. Section 39, Act X of 1865.

Where intestate has left neither lineal descendant, nor father, nor mother.

43. Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. Section 40, Act X of 1865.

Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister

44. If the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him. Section 41, Act X of 1865.

Illustrations.

(*a*) A, the intestate, has left a grandfather and a grandmother and no other relative standing in the same or a nearer degree of kindred to him They, being in the second degree, will be entitled to the property in equal shares exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree

(*b*) A, the intestate, has left a great grandfather, or a great grandmother and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*c*) A, the intestate, left a great grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares

(*d*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

Children's advancements not brought into hotchpot.

45. Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share. Section 42, Act V of 1865

CHAPTER III.

Special Rules for Parsi Intestates.

Division of property among widow and children of intestate

46. Where a Parsi dies leaving a widow and children, the property of which he dies intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter. Section 1, Act XXI of 1865.

Division of property among widower and children of intestate.

47. Where a female Parsi dies leaving a widower and children, the property of which she dies intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children. Section 2, Act XXI of 1865.

Division of property amongst the children of male intestate who leaves no widow.

48. When a Parsi dies leaving children but no widow, the property of which he dies intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter. Section 3, Act XXI of 1865.

Division of property amongst the children of female intestate who leaves no widower.

49. When a female Parsi dies leaving children but no widower, the property of which she dies intestate shall be divided amongst the children in equal shares. Section 4, Act XXI of 1865.

Division of predeceased child's share of intestate's property among the widow or widower and issue of such child.

50. If any child of a Parsi intestate has died in his or her life-time, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death. Section 5, Act XXI of 1865.

Division of property when the intestate leaves a widow or widower, but no lineal descendants.

51. Where a Parsi dies leaving a widow or widower, but without leaving any lineal descendants,— Section 6, Act XXI of 1865.

(*a*) his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property in respect of which he or she dies intestate, and the widow or widower shall take the other moiety, provided that where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother ;

(*b*) where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in Part I of Schedule II, shall take the moiety which the father and the mother would have taken if they had survived the intestate. The next of kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity ;

(*c*) where there are no relatives on the father's side, the intestate's widow or widower shall take the whole.

Division of property when the intestate leaves neither widow nor widower, nor lineal descendants

52. When a Parsi dies leaving neither lineal descendants nor a widow or widower, his or her next of kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property as to which he or she dies intestate. The next of kin standing first in Part II of the same Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity. Section 7, Act XXI of 1865.

CHAPTER IV.

Of the Effect of Marriage and Marriage-settlements on Property.

Rights of widower and widow respectively

53. A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property if he dies intestate : Section 43, Act X of 1865.

Provided that nothing in this section shall apply to Parsis. Section 8, Act XXI of 1865.

Effect of marriage between persons domiciled and one not domiciled in British India.

54. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage. Section 44, Act X of 1865.

Settlement of minor's property in contemplation of marriage.

55. The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from British India, with the approbation of the High Court. Section 45, Act X of 1865.

PART IV.

Testamentary Succession.

CHAPTER I.

Introductory.

Application of certain provisions of Part to a class of wills made by Hindus, etc.

56. The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply— Sections 2 and 3, Act XXI of 1870

(*a*) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay ; and

(*b*) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits :

Provided that marriage shall not revoke any such will or codicil.

General application of Part.

57. (*1*) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by section 56, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina ; nor shall they apply to any will made before the first day of January, 1866. Section 331, Act X of 1865.

(*2*) Save as provided in sub-section (*1*) or by any other law for the time being in force, the provisions of this Part shall constitute the law of British India applicable to all cases of testamentary succession. Section 2, Act X of 1865.

CHAPTER II.

Of Wills and Codicils.

Person capable of making wills.

58. Every person of sound mind not being a minor may dispose of his property by will. Section 46, Act X of 1865

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

Illustrations.

(*a*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c*) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

59. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Section 47, Act X of 1865.

Will obtained by fraud, coercion or importunity.

60. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes aways the free agency of the testator, is void.

Section 48, Act X of 1865.

Illustrations.

(*a*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a will in his, A's favour; such will has been obtained by fraud, and is invalid.

(*b*) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c*) A, being a prisoner by lawful authority, makes his will The will is not invalid by reason of the imprisonment.

(*d*) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e*) A, being of sufficient intellect, if undisturbed by the influence of others to make a will yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport and does so merely to purchase peace and in submission to B. The will is invalid.

(*g*) A being in a such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his will in the manner recommended by B. The will is not rendered invalid by the interession and persuasioh of B.

(*h*) A, with a view to obtaining a legacy from B pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention land flattery of A.

Will may be revoked or altered.

61. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Section 49, Act X of 1865.

CHAPTER III.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

Execution of unprivileged wills.

62. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, shall execute his will according to the following rules:—

Section 50, Act X of 1865.

(*a*) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(*b*) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(*c*) The will shall be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

63. If a testator, in a will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be deemed to form a part of the will or codicil in which it is referred to. Section 51, Act X of 1865.

CHAPTER IV.

OF PRIVILEGED WILLS.

Privileged will.

64. Any soldier being employed in an expedition or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in the manner provided in section 65. Such wills are called privileged wills. Section 52, Act X of 1865.

Illustrations.

(*a*) A, a medical officer attached to a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b*) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(*c*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d*) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, for the purposes of this section, a mariner at sea, and can make a privileged will.

(*e*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills

65. (*1*) Privileged wills may be in writing, or may be made by word of mouth. Section 53, Act X of 1865.

(*2*) The execution of privileged wills shall be governed by the following rules :—

(*a*) The will may be written wholly by the testator, with his own hand. In such case it need not be signed or attested.

(*b*) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

(*c*) If the instrument purporting to be a will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his will, if it is shown that it was written by the testator's directions or that he recognised it as his will.

(*d*) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(*e*) If the soldier or mariner has written instructions for the preparation of his will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his will.

(*f*) If the soldier or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

(g) The soldier or mariner may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

(h) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

CHAPTER V.

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

Effect of gift to attesting witness.

66. A will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband; but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them. Section 51, Act X of 1865

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified by interest or by being executor.

67. No person, by reason of interest in, or of his being an executor of, a will, shall be disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof. Section 55, Act X of 1865.

Revocation of will by testator's marriage.

68. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy. Section 56, Act X of 1865

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged will or codicil.

69. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same. Section 57, Act X of 1865

Illustrations.

(a) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

Effect of obliteration, interlineation or alteration in unprivileged will.

70. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the will: Section 58, Act X of 1865.

Provided that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

71. A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Section 59, Act X of 1865.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied by such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

72. (*1*) No unprivileged will or codicil, nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.

Section 60, Act X of 1865.

(*2*) When any will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the will or codicil.

CHAPTER VI.

OF THE CONSTRUCTION OF WILLS.

Wording will.

73. It is not necessary that any technical words or terms of art be used in a will, but only that the wording be such that the intentions of the testator can be known therefrom

Section 61, Act X of 1865.

Inquiries to determine questions as to object or subject of will.

74. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Section 62, Act X of 1865.

Illustrations.

(*a*) A, by his will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin, Mary. A Court may make enquiry in order to ascertain to what person the description in the will applies.

(*b*) A, by his will, leaves to B "my estate called Black Acre". It may be necessary to take evidence in order to ascertain what is the subject matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c*) A, by his will, leaves to B "the estate which I purchased of C" It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

75. (*1*) Where the words used in a will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

Section 63, Act X of 1865.

(*2*) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a*) A bequeaths a legacy to "Thomas, the second son of my brother, John". The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b) A bequeaths a legacy "to Thomas, the second son of my brother John". The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c) The testator bequeaths his property "to A and B, the legitimate children of C". C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d) The testator gives his residuary estate to be divided among "my seven children" and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e) The testator, having six grandchildren, makes a bequest to "my six grandchildren" and proceeding to mention them by their Christian names, mentions one twice over omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f) The testator bequeaths "1,000 rupees to each of the three children of A". At the date of the will A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

76. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Section 64, Act X of 1865.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

77. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Section 65, Act X of 1865.

Illustrations.

(a) A bequeaths to B "my marsh-lands lying in L, and in the occupation of X". The testator had marsh-lands lying in L but had no marsh-lands in the occupation of X. The words "in the the occupation of X" shall be rejected as erroneous and the marsh-lands of the testator lying in L shall pass by the bequest.

(b) The testator bequeaths to A "my zamindari of Rampur". He had an estate at Rampur but it was a taluq and not a zamindari. The taluq passes by this bequest.

When part of description may not be rejected as erroneous.

78. If a will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Section 66, Act X of 1865.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 77 shall be deemed to have been struck out of the will.

Illustrations.

(a) A bequeaths to B "my marsh-lands lying in L, and in the occupation of X". The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b) A bequeaths to B "my marsh-lands lying in L and in the occupation of X, comprising 1,000 bighas of lands". The testator had marsh-lands lying in L some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in cases of patent ambiguity.

79. Where the words of a will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of those applications was intended. Section 67, Act X of 1865.

Illustrations.

(*a*) A man, having two cousins of the name of Mary, bequeaths a sum of money to "my cousin, Mary". It appears that there are two persons each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b*) A, by his will, leave to B "my estate called Sultanpur Khurd". It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.

80. Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted. Section 68, Act X of 1865.

Illustrations.

(*a*) A man has an aunt, Caroline, and a cousin, Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "my aunt, Caroline" and 1,000 rupees to "my cousin, Mary" and afterwards bequeaths 2,000 rupees to "my before mentioned aunt, Mary". There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "my before-mentioned aunt, Mary". The bequest is therefore void for uncertainty under section 88.

(*b*) A bequeaths 1,000 rupees to
leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*) A bequeaths to B rupees, or "my estate of ". Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

81. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other. Section 69, Act X of 1865.

Illustrations.

(*a*) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(*b*) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B; the latter bequest is to be read as an exception out of the first as if he had said "I give Black Acre to B, and all the rest of my estate to A".

When words may be understood in restricted sense, and when in sense wider than usual.

82. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense. Section 70, Act X of 1865.

Illustrations.

(*a*) A testator gives to A "my farm in the occupation of B," and to C "all my marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all my marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that proportion of the farm which consists of marsh-lands in L.

(*b*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chests of clothes, and to his friend, A (a shipmate), his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

83. Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.

Section 71, Act X of 1865.

No part rejected, if it can be reasonably construed.

84. No part of a will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Section 72, Act X of 1865.

Interpretation of words repeated in different parts of will.

85. If the same words occur in different parts of the same will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

Section 73, Act X of 1865.

Testator's intention to be effectuated as far as possible.

86. The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Section 74, Act X of 1865.

Illustration.

The testator by a will made on his death-bed bequeathed all his property to C. D. for life and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 117, but it shall take effect so far as regards the gift to C. D.

The last of two inconsistent clauses prevails.

87. Where two clauses or gifts in a will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

Section 75, Act X of 1865.

Illustrations.

(a) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(b) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

88. A will or bequest not expressive of any definite intention is void for uncertainty.

Section 76, Act X of 1865.

Illustration.

If a testator says "I bequeath goods to A," or "I bequeath to A" or "I leave to A all the goods mentioned in the schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil'" or the like, without saying how much; this is void.

Words describing subject refer to property answering description at testator's death.

89. The description contained in a will of property, the subject of gift, shall, unless a contrary intention appears by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Section 77, Act X of 1865.

Power of appointment executed by general bequest.

90. Unless a contrary intention appears by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

Section 78, Act X of 1865.

Implied gift to objects of power in default of appointment.

91. Where property is bequeathed to or for the benefit of certain objects as a specified person may appoint or for the benefit of certain objects in such proportions as a specified person may appoint, and the will does not provide for the event of no appointment being made; if the power given by the will is not exercised, the property belongs to all the objects of the power in equal shares.

Section 79, Act X of 1865.

Illustration.

A, by his will, bequeaths a fund to his wife, for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heirs," etc., of particular person without qualifying terms.

92. Where a bequest is made to the "heirs" or "right heirs" or "relations" or "nearest relations" or "family" or "kindred" or "nearest of kin" or "next-of-kin" of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property. Section 80, Act X of 1865.

Illustrations.

(*a*) A leaves his property "to my own nearest relations" The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(*b*) A bequeaths 10,000 rupees "to B for his life, and, after the death of B, to my own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(*c*) A leaves his property to B ; but if B dies before him, to B's next of kin ; B dies before A ; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(*d*) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C." The legacy goes as if it had belonged to C and he had died intestate, leaving assets for the payment of his debts independently of the legacy

Bequest to "representatives," etc., of particular person.

93. Where a bequest is made to the "representatives" or "legal representatives" or "personal representatives" or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it. Section 81, Act X of 1865

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid : if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons

Bequest without words of limitation.

94. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him. Section 82, Act X of 1865

Bequest in alternative

95. Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect ; but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy. Section 83, Act X of 1865.

Illustrations

(*a*) A bequest is made to A or to B. A survives the testator, B takes nothing.

(*b*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B

(c) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of words describing a class added to bequest to person.

96. Where property is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will. Section 84, Act X of 1865

Illustrations.

(a) A bequest is made-

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A and his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(b) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c) A bequest is made to A for life and after his death to his issue. At the death of A the property belongs in equal shares to all persons who then answer the description of issue of A.

Bequest to class of persons under general description only

97. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy. Section 85, Act X of 1865

Construction of terms

98. In a will— Section 86, Act X of 1865

(a) the word "children" applies only to lineal descendants in the first degree;

(b) the word "grand-children" applies only to lineal descendants in the second degree of the person whose "children" or "grand-children" are spoken of;

(c) the words "nephews" and "nieces" apply only to children of brothers or sisters;

(d) the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousin," or "cousins-german," are spoken of;

(e) the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

(f) the words "second cousins" apply only to grand-children of brothers or of sisters of the grand-father or grand-mother of the person whose "second cousins" are spoken of;

(*g*) the words "issue" and descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of ;

(*h*) words expressive of collateral relationship apply alike to relatives of full and of half blood ; and

(*i*) all words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate.

99. In the absence of any intimation to the contrary in a will, the word "child," the word "son," the word "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative. Section 87 Act X of 1865.

Illustrations.

(*a*) A, having three children, B, C and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "my children". The property belongs to B and C in equal shares to the exclusion of D.

(*b*) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(*c*) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "my said children." B will take a share in the legacy along with the legitimate children

(*d*) A leaves a legacy to "the children of B". B is dead and has left none but illegitimate children. All those who had at the date of the will acquired the reputation of being the children of B are objects of the gift.

(*e*) A bequeaths a legacy to "the children of B". B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(*f*) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the will the reputation of being the child of A by the woman designated. B takes the legacy.

(*g*) A makes a bequest in favour of his child to be born of a woman who never becomes his wife. The bequest is void.

(*h*) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid

Rules of construction where will purports to make two bequests to same person.

100. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first ; if there is nothing in the will to show what he intended, the following rules shall have effect in determining the construction to be put upon the will :— Section 88, Act X of 1865.

(*a*) If the same specific thing is bequeathed twice to the same legatee in the same will or in the will and again in the codicil, he is entitled to receive that specific thing only.

(*b*) Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

(*c*) Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

(*d*) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by different codicil, the legatee is entitled to both legacies.

Explanation.—In clauses (*a*) to (*d*) of this section, the word "will" does not include a codicil.

Illustrations.

(*a*) A, having ten shares, and no more, in the Imperial Bank of India made his will, which contains near its commencement the words "I bequeath my ten shares in the Imperial Bank of India to B". After other bequests, the will concludes with the words "and I bequeath my ten shares in the Imperial Bank of India to B". B is entitled simply to receive A's ten shares in the Imperial Bank of India.

(*b*) A, having one diamond ring, which was given him by B, bequeaths to C the diamond ring which was given by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(*c*) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d*) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to receive 11,000 rupees.

(*e*) A, by his will, bequeaths to B 5,000 rupees and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f*) A, by one codicil to his will, bequeaths to B 5,000 rupees and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g*) A, by his will, bequeaths "500 rupees to B because she was my nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with my children." B is entitled to receive 1,000 rupees.

(*h*) A, by his will, bequeaths to B the sum of 5,000 rupees and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i*) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

Constitution of residuary legatee.

101. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property. Section 89, Act X of 1865.

Illustrations.

(*a*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words :—"I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to". B is constituted residuary legatee.

(*b*) A makes his will, with the following passage at the end of it :—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure". B is constituted the residuary legatee.

(*c*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which residuary legatee entitled.

102. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect. Section 90, Act X of 1865.

Illustration.

A by his will bequeaths certain legacies, of which one is void under section 117, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

Time of vesting legacy in general terms.

103. If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives. Section 91, Act X of 1865.

In what case legacy lapses.

104. (*1*) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the will that the testator intended that it should go to some other person. Section 92, Act X of 1865.

(2) In order to entile the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a*) The testator bequeaths to B "500 rupees which B owes me." B dies before the testator; the legacy lapses.

(*b*) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c*) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f*) The testator and the legatee perished in the same shipwreck There is no evidence to show which died first. The legacy lapses.

Legacy does not lapse if one of two joint legatees die before testator

105. If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole. Section 93, Act X of 1865.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect of words showing testator's intention to give distinct shares.

106. If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property. Section 94, Act X of 1865.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

107. Where a share which lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of. Section 95 Act X of 1865

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one third of the residue goes as undisposed of.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

108. Where a bequest has been made to any child or other lineal descendant of the testator and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the will. Section 96, Act X of 1865

Illustration.

A makes his will, by which he bequeaths a sum of money to his son, B, for his own absolute use and benefit. B dies before A, leaving a son, C, who survives A, and having made his will whereby he bequeaths all his property to his widow, D. The money goes to D.

Bequest to A for benefit of B does not lapse by A's death.

109. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made. Section 97, Act X of 1865.

Survivorship in case of bequest to described class.

110. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death. Section 98, Act X of 1865.

***Exceptions.*—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.**

Illustrations.

(*a*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(*c*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D, and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E, his executor. D has survived A. D and E are jointly entitled to so much of the lease-hold term as remains unexpired.

(*d*) A sum of money was bequeathed to A for her life, and after her decease, to the children of B. At the death of the testator, B had two children living, C and D, and, after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(*e*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belong to D, E and representatives of C, in equal shares

(*f*) A bequeaths 1,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(*g*) A bequeaths 1,000 rupees to "all the children born or to be born" of B to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the life time of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

(*h*) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

CHAPTER VII.

OF VOID BEQUESTS.

Bequest to person by a particular description who is not in existence at testator's death.

111. When a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void. Section 99, Act X of 1865

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he is dead, to his representatives.

Illustrations.

(*a*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(*b*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(*c*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.

(*d*) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e*) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

Section 100, Act X of 1865.

112. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a*) Property is bequeathed to A for his life, and after his death to his eldest son for life and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d*) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rules against perpetuity.

Section 101, Act X of 1865.

113. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the life-time of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(*a*) A fund is bequeathed to A for his life and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(*b*) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughters whose share it was. All these provisions are valid.

Bequest to a class some of whom may come under rules in sections 112 and 113

114. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the provisions of section 112 or section 113, such bequest shall be wholly void.

Section 102, Act X of 1865.

Illustrations.

(*a*) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and, as it is given to all his children as a class it is not good as to any division of that class, but is wholly void.

(*b*) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in *Illustrations* (*a*). The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest void under sections 112, 113 or 114.

115. Where a bequest is void by reasons of any of the provisions of section 112, section 113, or section 114, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Section 103, Act X of 1865.

Illustrations.

(*a*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 113. The bequest to B is void.

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 113. The bequest to B is void.

Effect of direction for accumulation

116. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Section 104, Act X of 1865.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a*) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of a year from the testator's death.

(*b*) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c*) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive, at the end of one year from the testator's death, the rents which have accrued during the year, together with any interest which may have been made by investing them.

(*d*) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(*e*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

Bequest to religious or charitable uses.

117. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons. Section 105, Act X of 1865.

Illustrations.

A having a nephew makes a bequest by a will not executed and deposited as required—

for the relief of poor people;

for the maintenance of sick soldiers;

for the erection or support of a hospital;

for the education and preferment of orphans;

for the support of scholars;

for the erection or support of a school;

for the building and repairs of a bridge;

for the making of roads;

for the erection or support of a church;

for the repairs of a church;

for the benefit of ministers of religion;

for the formation or support of a public garden

All these bequests are void.

CHAPTER VIII.

OF THE VESTING OF LEGACIES.

Date of vesting of legacy when payment or possession postponed

118. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest. Section 106, Act X of 1865

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a*) A bequeaths to B 100 rupees, to be paid to him at the death of C On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(d) A fund is bequeathed to A until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.

(e) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(f) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

119. (1) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. Section 107, Act X of 1865

(2) A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(a) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

(b) A sum of money is bequeathed to A "in case he shall attain the age of 18", or "when he shall attain the age of 18". A's interest in the legacy is contingent until the condition is fulfilled by his attaining that age.

(c) An estate is bequeathed to A for life, and after his death to B if B shall then be living; but if B shall not be then living to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other has happened.

(d) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(e) A legacy is bequeathed to A when she shall attain the age of 18 or shall marry under that age with he consent of B, with a proviso that, if she neither attains 18 nor marries under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.

(f) An estate is bequeathed to A until he shall marry and after that event to B. B's interest in the bequest is contingent until the condition is fulfilled by A's marrying.

(g) An estate is bequeathed to A until he shall take advantage of any law for the relief of insolvent debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of such a law.

(h) An state is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition is fulfilled by the expiration of the five years without B's having married C, or by the occurrence within that period of an event which makes the fulfilment of the condition impossible.

(k) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

120. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy. Section 108, Act X of 1865.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

CHAPTER IX.

OF ONEROUS BEQUESTS.

Onerous bequests.

121. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully. Section 109 Act X of 1865

Illustration.

A, having shares in (X) a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies; B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and other refused.

122. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous. Section 110 Act X of 1865

Illustration.

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

CHAPTER X.

OF CONTINGENT BEQUESTS.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

123. Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable. Section 111 Act X of 1865

Illustrations.

(*a*) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b*) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(*c*) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d*) A legacy is bequeathed to A for life, and, after his death, to B, and, "in case of B's death without children", to C. The words "in case of B's death without children" are to be understood as meaning in case B dies without children during the lifetime of A.

(*e*) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death", to C. The words "in case of B's death" are to be considered as meaning "in case B dies in the lifetime of A".

Bequest to such of certain persons as shall be surviving at some period not specified.

124. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the will. Section 112 Act X of 1865.

Illustrations.

(*a*) Property is bequeathed to A and B to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b*) Property is bequeathed to A for life, and, after his death, to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*c*) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d*) Property is bequeathed to A for life, and, after his death, to B and C, with direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

CHAPTER XI.

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

125. A bequest upon an impossible condition is void. Section 113, Act X of 1865.

Illustrations.

(*a*) An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

(*b*) A bequeths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

126. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void. Section 114, Act X of 1865.

Illustrations.

(*a*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to vesting of legacy.

127. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with. Section 115, Act X of 1865.

Illustrations.

(*a*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B, C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f*) A makes his will whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g*) A legacy is bequeated to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A and on failure of prior bequest to B.

128. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator. Section 116, Act X of 1865.

Illustrations.

(*a*) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

When second bequest not to take effect on failure of first.

129. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner. Section 117 Act X of 1865

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him, the bequest to B does not take effect.

Bequest over conditional upon happening or not happening of specified uncertain event.

130. (*1*) A bequest may be made to any person with the condition superadded that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that, in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person. Section 118, Act X of 1865.

(*2*) In each case the ulterior bequest is subject to the rules contained in sections 119, 120, 121, 122, 123, 124, 125, 126, 128 and 129.

Illustrations.

(*a*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy subject to be divested and to go to B in case A dies under 18.

(*b*) An estate is bequeathed to A with a proviso that if A shall dispute competency of the testator to make a will, to estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(*c*) A sum of money is bequeathed to A for life, and, after his death, to B; but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(*d*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(*e*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cantnot take effect, but the interests of the children pass to their representatives.

Condition must be strictly fulfilled.

131. An ulterior bequest of the kind contemplated by section 130 cannot take effect, unless the condition is strictly fulfilled. Section 119, Act X of 1865.

Illustrations.

(*a*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of D and C, the gift to E does not take effect.

(*b*) A legacy is baqueathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

132. If the ulterior bequest be not valid, the original bequest is not affected by it. Section 120, Act X of 1865.

Illustrations.

(*a*) An estate is bequeathed to A for his life with condition superadded that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will

(*b*) An estate is bequeathed to A for her life and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c*) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is voidunder section 104, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or not happen.

133. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen. Section 121, Act X of 1865.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(*b*) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c*) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d*) An estate is bequeathed to A, with a proviso that if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e*) A fund is bequeathed to A for life, and, after his death, to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under section 119.

134. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 119. Section 122, Act X of 1865.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.

135. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act. Section 123, Act X of 1865.

Illustrations.

(*a*) A bequest is made to A, with a proviso that, unless he enters the Army, legacy shall go over to B. A takes Holy Orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b*) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger and thereby indefinitely postpones the fulfilment of the conditions. The bequest ceases to have effect.

Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.

136. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Section 124, Act X of 1865.

Section 137, Act X of 1887.

CHAPTER XII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.

137. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Section 125, Act X of 1865.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

138. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Section 126, Act X of 1865.

Illustrations.

(*a*) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(*b*) A direct his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

Bequest of fund for certain purposes, some of which cannot be fulfilled.

139. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Section 127, Act X of 1865.

Illustrations.

(*a*) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(*b*) A bequeaths the residue of his estate, to be divided equally among his daughters with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

CHAPTER XIII.

OF BEQUESTS TO AN EXECUTOR.

Legatee named as executor cannot take unless he shows intention to act as executor.

140. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor. Section 128, Act X of 1865.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

CHAPTER XIV.

OF SPECIFIC LEGACIES.

Specific legacy defined.

141. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific. Section 129, Act X of 1865.

Illustrations.

(*a*) A bequeaths to B—

"the diamond ring presented to me by C" :

"my gold chain" :

"a certain bale of wool" :

"a certain piece of cloth" :

"all my household goods which shall be in or about my dwelling-house in M. Street, in Calcutta, at time of my death" :

"the sum of 1,000 rupees in a certain chest" :

"the debt which B owes me" :

"all my bills, bonds and securities belonging to me lying in my lodgings in Calcutta" :

"all my furniture in my house in Calcutta" :

"all my goods on board a certain ship now lying in the river Hughli" :

"2,000 rupees which I have in the hands of C" :

"the money due to me on the bond of D" :

"my mortgage on the Rampur factory" :

"one half of the money owing to me on my mortgage of Rampur factory" :

"1,000 rupees being part of a debt due to me from C" :

"my capital stock of £1,000 in East India stock" :

"my promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan" :

"all such sums of money as my executors may, after my death, receive in respect of the debt due to me from the insolvent firm of D and Company" :

"all the wine which I may have in my cellar at the time of my death" :

"such of my horses as B may select" :

"all my shares in the Imperial Bank of India" :

"all my shares in the Imperial Bank of India which I may possess at the time of my death" :

"all the money which I have in the 5½ per cent. loan of the Government of India" :

"all the Government securities I shall be entitled to at the time of my decease."

Each of these legacies is specific.

(*b*) A, having Government promissory notes for 10,000 rupees bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B. The legacy is specific.

(*c*) A having property at Benares and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

(*d*) A bequeaths to B—

his house in Calcutta :

his zamindari of Rampur :

his taluq of Ramnagar :

his lease of the indigo-factory of Salkya :

an annuity of 500 rupees out of the rents of zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e*) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(*f*) A bequeaths a sum of money—

to buy a house in Calcutta for B :

to buy an estate in zila Faridpur for B :

to buy a diamond ring for B :

to buy a horse for B :

to be invested in [illegible] in the Imperial Bank of India for B :

to be invested in Government securities for B :

A bequeaths to B—

"a diamond ring" :

"a horse" :

"10,000 rupees worth of Government securities" :

"an annuity of 500 rupees" :

"2,000 rupees to be paid in cash" :

"so much money as will produce 5,000 rupees four per cent. Government securities".

These bequests are not specific.

(*g*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of property which he may leave in England. No one of these legacies is specific.

Bequest of certain sum where stocks, etc., in which invested are described.

142. Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will. Section 130, Act X of 1865.

Illustration.

A bequeaths to B—

"10,000 rupees of my funded property" :

"10,000 rupees of my property now invested in shares of the East Indian Railway Company" :

"10,000 rupees, at present secured by mortgage of Rampur factory".

No one of these legacies is specific.

Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.

143. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed. Section 131, Act X of 1865.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees. The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

144. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator has been reduced to a certain form, or remitted to a certain place. Section 132, Act X of 1865.

Illustration.

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realized in England. The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

145. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed. Section 133 Act X of 1865.

Retention, in form, of specific bequest to several persons in succession.

146. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing. Section 134, Act X of 1865.

Illustrations.

(*a*) A, having lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for fifteen years C can take nothing under the bequest.

(*b*) A, having an annuity during the life of B, bequeaths it to C, for his life, and, after C's death, to D. C is to enjoy the annuity as A left it, although if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

147. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may by any general rule authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will. Section 135, Act X of 1865

Illustration.

A, having a lease for a term of years, bequeaths all his property to B for life, and, after B's death, to C. The lease must be sold, the proceeds invested as stated in this section and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of the assets to pay legacies, specific legacy not to abate with general legacies.

148. If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies. Section 136, Act X of 1865.

CHAPTER XV.

OF DEMONSTRATIVE LEGACIES.

Demonstrative legacy defined.

149. Whereas a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock, out of which payment is to be made, the legacy is said to be demonstrative. Section 137, Act X of 1865

Explanation —The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific ;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific, the legacy to C is demonstrative.

(*b*) A bequeaths to B—

"ten bushels of the corn which shall grow in my field of Green Acre":

"80 chests of the indigo which shall be made at my factory of Rampur" :

"1,000 rupees out of my five per cent. promissory notes of the Government of India" :

an annuity of 500 rupees "from my funded property" :

"1,000 rupees out of the sum of 2,000 rupees due to me by C" :

an annuity, and directs it to be paid "out of the rents arising from my talak of Ramnagar".

(c) A bequeaths to B—

"10,000 rupees out of my estate at Ramnagar", or charges it on his estate at Ramnagar:

"Rs. 10,000 being my share of the capital embarked in a certain business".

Each of these bequests is demonstrative.

Orders of payment when legacy directed to be paid out of fund the subject of specific legacy.

150. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator. Section 138, Act X of 1865.

Illustration.

A bequeaths to B Rs. 1,000, being part of a debt due to him from W. He also bequeaths to C Rs. 1,000 to be paid out of the debt due to him from W. The debt due to A from W is only Rs. 1,500, of these Rs. 1,500 Rs. 1,000 belong to B, and Rs. 500 are to be paid to C. C is also to receive Rs. 500 out of the general assets of the testator.

CHAPTER XVI.

OF ADEMPTION OF LEGACIES.

Ademption explained

151. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed, that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will. Section 139, Act X of 1865

Illustrations.

(a) A bequeaths to B—

"the diamond ring presented to me by C":

"my gold chain":

"a certain bale of wool":

"a certain piece of cloth":

"all my household goods which shall be in or about my dwelling-house in M. Street in Calcutta, at the time of my death".

A, in his life time,—

sells or gives away the ring:

converts the chain into a cup:

converts the wool into cloth:

makes the cloth into a garment:

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(b) A bequeaths to B—

"the sum of 1,000 rupees in a certain chest":

"all the horses in my stable".

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(c) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

Non-ademption demonstrative legacy.

152. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind, but it shall in such case be paid out of the general assets of the testator. Section 140, Act X of 1865.

Ademption of specific bequest of right to receive something from third party.

153. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed. Section 141, Act X of 1865.

Illustrations.

(*a*) A bequeaths to B—

"the debt which C owes me":

"2,000 rupees which I have in the hands of D":

"the money due to me on the bond of E":

"my mortgage on the Rampur factory".

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(*b*) A bequeaths to B his interest in certain policies of life assurance. A in his lifetime receives the amount of the policies. The legacy is adeemed.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

154. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received. Section 142, Act X of 1865.

Illustrations.

A bequeths to B "the debt due to me by C". The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

155. If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy. Section 143, Act X of 1865.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where portion of fund specifically bequeathed to one legatee, any legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

156. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator. Section 144 Act X of 1865

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 5,000 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

157. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed. Section 145, Act X of 1865.

Illustration.

A bequeaths to B—

"my capital stock of 1,000*l.* in East India Stock"

"my promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan".

A sells the stock and the notes. The legacies are adeemed.

Ademption pro tanto where stock, specifically bequeathed, exists in part only at testator's death.

158. *Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist. Section 146, Act X of 1865.

Illustration.

A bequeaths to B his 10,000 rupees in the 5½ per cent. loan of the Government of India. A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with certain place by reason of removal.

159. A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator. Section 147, Act X of 1865.

Illustrations.

(*a*) A bequeaths to B "all my household goods which shall be in or about my dwelling-house in Calcutta at the time of my death". The goods are removed from the house to save them from fire. A dies before they are brought back.

(*b*) A bequeaths to B "all my household goods which shall be in or about my dwelling-house in Calcutta at the time of my death". During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

When removal of thing bequeathed does not constitute ademption.

160. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath. Section 148, Act X of 1865.

Illustrations.

(*a*) A bequeaths to B "all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Calcutta". At the time of his death, these effects had been removed from his lodgings in Calcutta.

(*b*) A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

(*c*) A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.

161. Where the thing bequeathed is not the right to receive something of value from a third person but the money or other commodity which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed. Section 149, Act X of 1865.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

162. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change. Section 150, Act X of 1865.

Illustrations.

(*a*) A bequeaths to B "all the money which I have in the 5½ per cent. loan of the Government of India". The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

(b) A bequeaths to B the sum of 2,000*l.* invested in Consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name.

(c) A bequeaths to B the sum of Rs. 10,000 in promissory notes of the Government of India which he has power under his marriage settlement to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of those legacies has been adeemed.

Change of subject without testator's knowledge.

163. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed. Section 151. Act X of 1865.

Illustration.

A bequeaths to B "all my 3 per cent Consols". The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed lent to third party on condition that it be replaced.

164. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed. Section 152, Act X of 1865

Stock specifically bequeathed sold but replaced, and belonging to testator at his death.

165. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed. Section 153, Act X of 1865.

CHAPTER XVII.

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

Non-liability of executor to exonerate specific legatees.

166. (*1*) Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance. Section 154, Act X of 1865.

(2) A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(a) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(b) A bequeaths to B a zamindari which at A's death is subject to a mortgage for 10,000 rupees; and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death B, if he accepts the bequest accepts it subject to his charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

167. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate. Section 155, Act X of 1865.

Illustrations.

(a) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(b) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money, one-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.

168. Where there is a bequest of any interest in immoveable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death. Section 156, Act X of 1865.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in joint stock company.

169. In the absence of any direction in the will, where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the bequest. Section 157, Act X of 1865.

Illustrations.

(*a*) A bequeaths to B his shares in a certain railway. At A's death there was due from him the sum of 100 rupees in respect of each share, being the amount of a call which had been duly made, and the sum of five rupees in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 100 rupees in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d*) A bequeaths to B his shares in a joint stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e*) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of fifty rupees per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalment.

CHAPTER XVIII.

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

Bequest of thing described in general terms.

170. If there is a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description. Section 158, Act X of 1865.

Illustrations.

(*a*) A bequeaths to B a pair of carriage-horses or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(*b*) A bequeaths to B "my pair of carriage-horses". A had no carriage-horses at the time of his death. The legacy fails.

CHAPTER XIX.

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

Bequest of interest or produce of fund.

171. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee. Section 159, Act X of 1865.

Illustrations.

(a) A bequeaths to B the interest of his 5 per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(b) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and, after his death, to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(c) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

CHAPTER XX.

OF BEQUESTS OF ANNUITIES.

Annuity created by will payable for life only unless contrary intention appears by will.

172. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will, notwithstanding that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it. Section 160, Act X of 1865.

Illustrations.

(a) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(b) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity

173. Where the will directs that an annuity shall be provided for any person out of the proceeds of property or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will. Section 161, Act X of 1865.

Illustrations.

(a) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b) A bequeaths a fund to B for his life, a directs that after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

Abatement of annuity.

174. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will. Section 162, Act X of 1865.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

175. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose. Section 163, Act X of 1865.

CHAPTER XXI.

OF LEGACIES TO CREDITORS AND PORTIONERS.

Creditor *primâ facie* entitled to legacy as well as debt.

176. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt. Section 164, Act X of 1865.

Child *primâ facie* entitled to legacy as well as portion.

177. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Section 165, Act X of 1865.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee

178. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Section 166, Act X of 1865.

Illustrations.

(*a*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b*) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

CHAPTER XXII.

OF ELECTION.

Circumstances in which election takes place.

179. Where a person, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and, in the latter case, he shall give up any benefits which may have been provided for him by the will.

Section 167, Act X of 1865.

Devolution of interest relinquished by owner

180. An interest relinquished in the circumstances stated in section 179 shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Section 168, Act X of 1865

Testator's belief as to his ownership immaterial.

181. The provisions of sections 179 and 180 apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Section 169, Act X of 1865.

Illustrations.

(*a*) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must give up the jewel or to lose the estate.

(*c*) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate or to lose the legacy.

(*d*) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir at law, bequeaths a legacy to C and, subject thereto, "devises and bequeaths to B "all my property whatsoever and wheresoever", and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

Bequest for man's benefit how regarded for purpose of election.

182. A bequest for a person's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Section 170, Act X of 1865.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzrug to his own executors with a direction that it should be sold and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

183. A person taking no benefit directly under a will, but deriving a benefit under it indirectly, is not put to his election.

Section 171, Act X of 1865.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

184. A person who in his individual capacity takes a benefit under a will may, in another character, elect to take in opposition to the will.

Section 172, Act X of 1865.

Illustration.

The estate of Sultanpur is settled upon A for life, and, after his death, upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to provisions of last six sections.

185. Notwithstanding anything contained in sections 179 to 184, where a particular gift is expressed in the will to be in lieu of something belonging to the legatee which is also in terms disposed of by the will, then, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Section 172, Act X of 1865.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200 rupees during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000 rupees. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000 rupees.

When acceptance of benefit given by will constitutes election to take under will.

186. Acceptance of a benefit given by a will constitutes an election by the legatee to take under the will, if he had knowledge of his right to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Section 173, Act X of 1865.

Illustrations.

(*a*) A is owner of an estate called Sultanpur Khurd, and has a life interest in another estate called Sultanpur Buzrug, to which upon his death his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzrug to C. B in ignorance of his own right to the estate of Sultanpur Buzrug, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzrug to C.

(*b*) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

Circumstances in which knowledge or waiver is presumed or inferred.

187. (*1*) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent. Section 174, Act X of 1865.

(*2*) Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done. Section 175, Act X of 1865.

Illustration.

A bequeaths to B an estate to which she is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

188. If the legatee does not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reesonable time after he has received it, he shall be deemed to have elected to confirm the will. Section 176, Act X of 1865

Postponement of election in case of disability.

189. In case of disabitily the election shall be postponed until the disability ceases, or until the election is made by some competent authority. Section 177, Act X of 1865.

CHAPTER XXIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

190. (*1*) A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will. Section [illegible], Act X of 1865

(*2*) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

(*3*) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(*a*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death,—

a watch :
a bond granted by C to A :
a bank note :
a promissory note of the Government of India endorsed in blank :
a bill of exchange endorsed in blank.
certain mortgage deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch :
the debt secured by C's bond :
the bank note :
the promissory note of the Government of India .
the bill of exchange :
the money secured by the mortgage-deeds.

(*b*) A, being ill, and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(*c*) A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcel respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART V.

PROTECTION OF PROPERTY OF DECEASED.

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

191. (*1*) If any person dies leaving property, moveable or immoveable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended. Section 1, Act XIX of 1841.

(2) Any agent, relative or near friend, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief. Section 2, Act XIX of 1841.

Inquiry made by Judge.

192. The District Judge, to whom such application is made, shall, in the first place, examine the applicant on oath, and take such further evidence, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bonâ fide*. Section 3, Act XIX of 1841

Procedure.

193. If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter provided) and shall deliver possession accordingly: Section 4, Act XIX of 1841.

Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for citing the party complained of or not.

Appointment of curator pending determination of suit.

194. If it further appears upon such application and examination as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof: Section 5, Act XIX of 1841.

Provided that, in the case of land, the Judge may delegate to the Collector, or to any officer subordinate to the Collector, the powers of a curator:

Provided, further, that every appointment of a curator in respect of any property shall be duly published.

Powers conferable on curator.

195. The District Judge may autherize the curator either to take possession of the property generally, or until security is given by the party in possession, or until inventories of the property have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession: Section 6, Act XIX of 1841.

Provided that it shall be entirely discretionary with the Judge, whether he allows the party in possession to continue in such possession on given security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

Prohibition of exercise of certain powers by curators.

196. (*1*) Where a certificate has been granted under Part VIII or under the Succession Certificate Act, 1889, or a grant of probate or letters of administration has been made, a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

Section 23, Act VII of 1889.

VII of 1889

(*2*) All persons who have paid debts or rents to a curator authorized by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

Curator to give security and may receive remuneration.

197. (*1*) The District Judge shall take from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter provided, and may authorize him to receive out of the property such remuneration, in no case exceeding five per centum on the moveable property and on the annual profits of the immoveable property, as the District Judge thinks reasonable.

Section 7, Act XIX of 1841.

(*2*) All surplus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit.

(*3*) Security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator; but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

Report from Collector where estate includes revenue-paying land.

198. (*1*) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government, in all metters regarding the propriety of summoning the party in in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector, and the Collector shall thereupon furnish the same:

Section 8, Act XIX of 1841

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.

(*2*) The Judge shall not be obliged to act in conformity with any such report, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it is dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

Institution and defence of suits.

199. The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate:

Section 9, Act XIX of 1841.

Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

Allowances to apparent owners pending custody by curator.

200. Pending the custody of the property by the curator, the District Judge may make such allowances to parties having a *primâ facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he considers necessary, and may, at his discretion, take security for the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary suit, not to be entitled thereto.

Section 10, Act XIX of 1841

Accounts to be filed by curator.

201. The curator shall file monthly accounts in abstract, and shall, on the expiry of each period of three months, if his administration lasts so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Distrct Judge.

Section 11, Act XIX of 1841

Inspection of accounts and right of interested party to keep duplicate.

202. (*1*) The accounts of the curator shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator. Section 12, Act XIX of 1841.

(*2*) If it is found that the accounts of the curator are in arrear or that they are erroneous or incomplete, or if the curator does not produce them whenever he is ordered to do so by the District Judge, he shall be punishable with fine not exceeding one thousand rupees for every such default.

Bar to appointment of second curator for same property.

203. If the Judge of any district has appointed a curator, in respect of the whole of the property of a deceased person, such appointment shall preclude the Judge of any other district within the same province from appointing any other curator, but the appointment of a curator in respect of a portion of the property of the deceased shall not preclude the appointment within the same province of another curator in respect of the residue or any portion thereof: Section 13, Act XIX of 1841.

Provided that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Part before another Judge:

Provided, further, that, if two or more curators are appointed by different Judges for several parts of an estate, it shall be lawful for the High Court to make such order as it thinks fit for the appointment of one curator of the whole property.

Limitation of time for application for curator.

204. An application under this Part to the District Judge must be made within six months of the death of the proprietor whose property is claimed by right in succession. Section 14, Act XIX of 1841.

Bar to enforcement of Part against public settlement or legal directions by deceased.

205. Nothing in this Part shall be deemed to authorize the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any property for the possession of his property after his decease in the event of minority or otherwise, and, in every such case, as soon as the Judge having Jurisdiction over the property of a deceased person is satisfied of the existence of such directions, he shall give effect thereto. Section 15, Act XIX of 1841.

Court of Wards to be made curator in case of minors having property subject to its jurisdiction.

206. Nothing in this Part shall be deemed to authorize any disturbance of the possession of a Court of Wards of any property; and in case a minor, or other disqualified person whose property is subject to the Court of Wards, is the party on whose behalf application is made under this Part, the District Judge, if he determines to summon the party in possession and to appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the suit without taking such security as aforesaid; and if the minor or other disqualified person, upon the adjudication of the summary suit, appears to be entitled to the property, possession shall be delivered to the Court of Wards. Section 16, Act XIX of 1841.

Saving of right to bring regular suit.

207. Nothing contained in this Part shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after the summoning of the party in possession, or by the party who may have been evicted from the possession under this Part. Section 17, Act XIX of 1841.

Effect of decision of summary suit.

208. The decision of a District Judge in a summary suit under this Part shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review. Section 18, Act XIX of 1841.

Appointment of public curators.

209. The Local Government may appoint public curators for any district or number of districts; and the District Judge having jusisdiction shall nominate such public curator or Curators in all cases where the choice of a curator is left discretionary with him under this part. Section 19, Act XIX of 1841.

PART VI.

REPRESENTATIVE TITLE TO PROPERTY OF DECEASED.

Right to intestate's property.

210. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction : Section 190, Act X of 1865.

Provided that this section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina or Indian Christian. Section 331, Act X of 1865. Section 3, Act VII of 1901.

Right as executor or legatee when established.

211. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in British India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed : Section 187, Act X of 1865. Section 2 (1), Act VIII of 1903

Provided that this section shall not apply in the case of wills made by Muhammadans, and shall only apply in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the class specified in section 56. Section 331, Act X of 1865 Section 2, Act XXI of 1870.

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons

212. (*1*) No Court shall—

(*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or Section 4, Act VII of 1889

(*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

(*i*) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(*ii*) a certificate granted under section 31 or section 32 of the Administrator-General's Act, 1913, and having the debt mentioned therein, or III of 1913.

(*iii*) a succession certificate granted under Part VIII and having the debt specified therein, or

(*iv*) a certificate granted under the Succession Certificate Act, 1889, or VII of 1889

(*v*) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the first day of May, 1889, having the debt specified therein.

(*2*) The word "debt" in sub-section (*1*) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

Effect of certificate of subsequent probate or letters of administration.

213. (*1*) A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted under Part VIII or under the Succession Certificate Act, 1889, or Bombay Regulation No. VIII of 1827, in respect of any debts or securities included in the estate. Section 152, Act V of 1881. Section 21, Act VII of 1889. VII of 1889.

(*2*) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

PART VII.

PROBATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED.

Application of Part.

214. Save as otherwise provided by this Act or by any other law for the time being in force, all grants of probate and letters of administration with the will annexed and the administration of the assets of the deceased in case of testamentary succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part.

Section 2, Act X of 1865 Sections 2 and 150, Act V of 1881

CHAPTER I.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such

215. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such :

Section 179, Act X of 1865.

Provided that, when the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

Section 4, Act V of 1881.

Administration with copy annexed of authenticated copy of will proved abroad.

216. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province, whether within or beyond the limits of His Majesty's dominions, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Section 5, Act V of 1881. Section 180, Act X of 1865.

Probate only to appointed executor

217. (*1*) Probate shall be granted only to an executor appointed by the will.

(*2*) The appointment may be expressed or by necessary implication.

Section 6, Act V of 1881. Section 181, Act X of 1865. Section 7, Act V of 1881. Section 182, Act X of 1865.

Illustrations.

(*a*) A wills that C be his executor if B will not B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in law C, and adds "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words,—" I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted

218. Probate cannot be granted to any person who is a minor or is of unsound mind, nor, unless the deceased was a Hindu, Muhammadan, Buddhist, or an exempted person, to a married woman without the previous consent of her husband.

Section 183, Act X of 1865. Section 8, Act V of 1881,

Grant of probate to several executors simultaneously or at different times

219. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Section 9, Act V of 1881. Section 184, Act X of 1865.

Illustration.

A is an executor of B's will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time or to A first and then to C, or to C first and then to A.

Separate probate of codicil discovered after grant of probate.

220. (*1*) If a codicil is discovered after the granted probate, a separate probate of that codicil may be granted to the executor if it in no way repeals the appointment of executors, made by the will.

(*2*) If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.

Section 10, Act V of 1881. Section 185, Act X of 1865.

Accrual of representation to surviving executor.

221. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Section 11, Act V of 1881. Section 186, Act X of 1865.

Effect of probate

222. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Section 12, Act V of 1881. Section 188, Act X of 1865.

To whom administration may not be granted.

223. Letters of administration cannot be granted to any person who is a minor or is of unsound mind nor, unless the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, to a married woman without the previous consent of her husband. Section 13, Act V of 1881. Section 189, Act X of 1865.

Effect of letters of administration.

224. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death. Section 14, Act V of 1881. Section 191, Act X of 1865.

Acts not validated by administration

225. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate. Section 15, Act V of 1881 Section 192, Act X of 1865.

Grant of administration where executor has not renounced

226. When a person appointed an executor has not renounced the executorship, letters of admministration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship : Section 16, Act V of 1881 Section 193 Act X of 1865

Provided that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

227. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor. Section 17, Act V of 1881. Section 194, Act X of 1865

Procedure where executor renounces or fails to accept within time limited.

228. If an executor renounces, or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy. Section 18, Act V of 1881 Section 195, Act X of 1865

Grant of administration to universal residuary legatees

229. When— Section 19, Act V of 1881. Section 196, Act X of 1865

(*a*) the deceased has made a will, but has not appointed an executor, or

(*b*) he has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the will, or

(*c*) the executor dies after having proved the will, but before he has administered all the estate of the deceased ;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

230. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully admininistered, his representative has the same right to administration with the will annexed as such residuary legatee. Section 20, Act V of 1881 Section 197, Act X of 1851.

Grant of administration where no executor, nor residuary legatee nor representative of such legatee.

231. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly. Section 21, Act V of 1887. Section 198, Act X of 1865.

Citation before grant of administration to legatee other than universal or residuary.

232. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner herainafter mentioned, calling on the next-of-kin to accept or refuse letters of administration. Section 22, Act V of 1881. Section 199, Act X of 1865.

To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist or exempted person.

233. (*1*) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased would be entitled to the whole or any part or such deceased's estate. Section 21, Act V of 1883.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

When deceased is not a Hindu, Muhammadan, Buddhist or exempted person.

234. If the deceased has died intestate and was not a person belonging to any of the classes referred to in section 233 those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated, namely :— Section 200, Act X of 1865.

(1) If the deceased has left a widow, administration shall be granted to the widow, unless the Court sees cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased. Section 201, Act X of 1865.

Illustrations.

(a) The widow is a lunatic or has committed adultery or has been barred by her marriage settlement of all interest in her husband's estate. There is cause for excluding her from the administration.

(b) The widow has married again since the decease of her husband. This is not good cause for her exclusion.

(2) If the Judge thinks proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow. Section 202, Act X of 1865.

(3) If there is no widow, or if the Court sees cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate : Section 203, Act X of 1865.

Provided that, when the mother of the deceased is one of the class of persons so entitled, she shall be solely entitled to administration.

(4) Those who stand in equal degree of kindred to the deceased are equally entitled to administration. Section 204, Act X of 1865.

(5) The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband. Section 205, Act X of 1865.

(6) When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor. Section 206, Act X of 1865.

(7) Where the deceased has left property in British India, letters of administration shall be granted according to the foregoing rules, notwithstanding that he had his domicile in a country in which the law relating to testate and intestate succession differs from the law of British India. Section 207, Act X of 1865.

CHAPTER II.

OF LIMITED GRANTS.

Grants limited in duration.

Probate of copy or draft of lost will.

235. When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been reserved, probate may be granted of such copy or draft limited until the original or a properly authenticated copy of it is produced. Section 208, Act X of 1865. Section 21, Act V of 1881.

Probate of contents of lost or destroyed will.

236. When a will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence. Section 209, Act X of 1865 Section 25, Act V of 1881.

Probate of copy where original exists.

237. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it is produced. Section 210, Act X of 1865. Section 26, Act V of 1881.

Administration until will produced.

238. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it is produced.

Section 211, Act X of 1865. Section 27, Act V of 1881.

Grants for the use and benefit of others having right.

Administration, with will annexed, to attorney of absent executor.

239. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Section 212, Act X of 1865. Section 28, Act V of 1881.

Administration, with will annexed, to attorney of absent person who, if present, would be entitled to administer.

240. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his attorney or agent limited as mentioned in section 239.

Section 213, Act X of 1865. Section 29, Act V of 1881.

Administration to attorney of absent person entitled to administer in case of intestacy.

241. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person, limited as mentioned in section 239.

Section 214, Act X of 1865. Section 30, Act V of 1881.

Administration during minority of sole executor or residuary legatee.

242. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court may think fit until the minor has attained his majority at which period, and not before, probate of the will shall be granted to him.

Section 215, Act X of 1865. Section 31, Act V of 1881.

Administration during minority of several executors or residuary legatees.

243. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Section 216, Act X of 1865. Section 32, Act V of 1881.

Administration for use and benefit of lunatic or minor.

244. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, is a minor or lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there is no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes of sound mind, as the case may be.

Section 217, Act X of 1865. Section 33, Act V of 1881.

Administration *pendente lite*.

245. Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Section 218, Act X of 1865. Section 34, Act V of 1881.

Grants for special purposes.

Probate limited to purpose specified in will.

246. If an executor is appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney or agent to take administration on his behalf, the letters of administration, with the will annexed, shall be limited accordingly.

Section 219, Act X of 1865. Section 35, Act V of 1881.

Administration, with will annexed, limited to particular purpose.

247. If an executor appointed generally gives an authority to an attorney or agent to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

Section 220, Act X of 1865. Section 36, Act V of 1881.

Administration limited to property in which person has beneficial interest.

248. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Section 221, Act X of 1865. Section 37, Act V of 1881.

Administration limited to suit.

249. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Section 222, Act X of 1865. Section 38, Act V of 1881.

Administration limited to purpose of becoming party to suit to be brought against administrator.

250. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court which has granted the probate or letters of administration exercises jurisdiction, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Section 223, Act X of 1865. Section 39, Act V of 1881.

Administration limited to collection and preservation of deceased's property.

251. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose jurisdiction any of the property is situate may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased and to the giving of discharges for debts due to his estate, subject to the directions of the Court.

Section 224, Act X of 1865. Section 40, Act V of 1881.

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

252. (*1*) When a person has died intestate, or leaving a will of which there is no executor willing and competent to act or where the executor is, at the time of the death of such person, resident out of the province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, the Court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(*2*) In every such case letters of administration may be limited or not as the Court thinks fit.

Section 225, Act X of 1865. Section 41, Act V of 1881.

Grants with exception.

Probate or administration, with will annexed, subject to exception.

253. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Section 226, Act X of 1865. Section 42, Act V of 1881.

Administration with exception.

254. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Section 227, Act X of 1865. Section 43 Act V of 1881.

Grants of the rest.

Probate or administration of rest.

255. Whenever a grant with exception of probate, or of letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Section 228, Act X of 1865. Section 14, Act V of 1881.

Grant of effects unadministered.

Grant of effects unadministered.

256. If an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Section 229, Act X of 1865. Section 45, Act V of 1881.

Rules as to grants of effects unadministered.

257. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Section 230, Act X of 1865. Section 46, Act V of 1881.

Administration when limited grant expired and still some part of estate unadministered.

258. When a limited grant has expired by efflux of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Section 231, Act X of 1865. Section 47, Act V of 1881.

Alteration in Grants.

What errors may be rectified by Court.

259. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Section 232, Act X of 1865. Section 48, Act V of 1881.

Procedure where codicil discovered after grant of administration with will annexed.

260. If, after the grant of letters of administration with the will annexed, a codicil is discovered, it may be added to the grant on due proof and identification, and the grant may be altered and amended accordingly.

Section 233, Act X of 1865. Section 49, Act V of 1881.

Revocation of Grants.

Revocation or annulment for just cause.

261. The grant of probate or letters of administration may be revoked or annulled for just cause.

Section 234, Act X of 1865. Section 50, Act V of 1881.

Explanation.—Just cause shall be deemed to exist where—

(*a*) the proceedings to obtain the grant were defective in substance ; or

(*b*) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ; or

(*c*) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ; or

(*d*) the grant has become useless and inoperative through circumstances ; or

(*e*) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VI of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Sections 2 and 11, Act VI of 1889.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER III.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, etc.

262. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district :

Section 235, Act X of 1865. Section 51, Act V of 1881.

Provided that, except in cases to which section 56 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, and the province of Burma, shall, when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the Local Government has, by a notification in the local official Gazette, authorized it so to do.

Section 2, Act V of 1881. Section 2, Schedule I, Act XXXVIII of 1920.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

263. (*1*) The High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may, from time to time, prescribe :

Section 235-A, Act X of 1865. Section 52, Act V of 1881. Section 2, Act VI of 1881.

Provided that, in the case of High Courts not established by Royal Charter, such appointment shall not be without the previous sanction of the Local Government.

(*2*) Persons so appointed shall be called "District Delegates".

District Judge's powers as to grant of probate and administration.

264. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his Court.

Section 236, Act X of 1865, Section 53, Act V of 1881.

District Judge may order person to produce testamentary papers.

265. (*1*) The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

Section 237, Act X of 1865. Section 54, Act V of 1881.

(*2*) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same.

(*3*) Such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit and had made such default.

XLV of 1860.

(*4*) The costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

266. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908.

Section 238, Act X of 1865. Section 55, Act V of 1881

V of 1908.

When and how District Judge to interfere for protection of property.

267. (*1*) Until probate is granted of the will of a deceased person, or an administrator of his estate is constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property.

Section 239, Act X of 1865. Section 3, Act VII of 1901.

(*2*) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate.

When probate or administration may be granted by District Judge.

268. Probate of the will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property moveable or immoveable, within the jurisdiction of the Judge.

Section 240, Act X of 1865. Section 56, Act V of 1881.

Disposal of application made to Judge of district in which deceased had no fixed abode.

269. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

Section 241, Act X of 1865. Section 57, Act V of 1881.

Probate and letters of administration may be granted by Delegate.

270. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition, verified as hereinafter provided, that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate.

Section 241-A, Act X of 1865. Section 58, Act V of 1881. Section 3, Act VI of 1881.

Conclusiveness of probate or letters of administration.

271. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the province in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:

Section 242, Act X of 1865. Section 59, Act V of 1881. Act XII of 1891.

Provided that probates and letters of administration granted—

Sections 2 (2) and 3 (1), Act VIII of 1902.

(*a*) by a High Court, or

(*b*) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within jurisdicrion of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission to High Courts of certificate of grants under provisio to section 271.

272. (*1*) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 271, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

Section 242-A, Act X of 1865. Section 60, Act V of 1881. Sections 2 (3) and 3 (2), Act VIII of 1903.

(*a*) when the grant has been made by a High Court, to each of the other High Courts;

(*b*) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely :—

"I, *A.B.*, Registrar (*or* as the case may be) of the High Court of Judicature at (*or* as the case may be), hereby certify that on the day of , the High Court of Judicature at (*or* as the case may be) granted probate of the will (*or* letters of administration of the estate) of *C. D.*, late of , deceased, to *E. F.* of and *G. H.* of , and that such probate (*or* letters) has (*or* have) effect over all the property of the deceased throughout the whole of British India,"

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 274 and 276, to be situate within the jurisdiction of a District Judge in another province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

Conclusiveness of application for probate or administration if properly made and verified.

273. The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration; and no such grant shall be impeached by reason only that the testator or intestate had no fixed place of abode or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Section 243, Act X of 1865. Section 61, Act V of 1881.

Petition for probate.

274. (1) Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made with the will or in the cases mentioned in sections 235, 236 and 237, a copy, draft, or statement of the contents thereof, annexed, and stating—

Section 244, Act X of 1865. Section 62, Act V of 1881.

(*a*) the time of the testator's death,

(*b*) that the writing annexed is his last will and testament,

(*c*) that it was duly executed,

(*d*) the amount of assets which are likely to come to the petitioner's hands, and

Section 3, Act VI of 1889.

(*e*) when the application is for probate, that the petitioner is the executor named in the will.

(2) In addition to these particulars, the petition shall further state,—

(*a*) when the application is to the District Judge, that the deceased at the time of his death had his fixed place of abode, or had some property, situate within the jurisdiction of the Judge ; and

(*b*) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Section 4, Act VI of 1881.

(3) Where the application is to the District Judge and any portion of the assets likely come to the petitioner's hands is situate in another province, the petition shall further state the amount of such assets in each province and the District Judges within whose jurisdiction such assets are situate.

Sections 2 (4) and 3 (3), Act VIII of 1903.

In what cases translation of will to be annexed to petition. Verification of translation by person other than Court translator.

275. In cases wherein the will, copy or draft is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft is in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner, namely:— Section 245, Act X of 1865. Section 63, Act V of 1881.

"I, (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

276. (*1*) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating— Section 246, Act X of 1865. Section 64, Act V of 1881.

(*a*) the time and place of the deceased's death,

(*b*) the family or other relatives of the deceased, and their respective residences,

(*c*) the right in which the petitioner claims,

(*d*) the amount of assets which are likely to come to the petitioner's hands,

(*e*) that the deceased left some property within the jurisdiction of the District Judge or District Delegate to whom the application is made, and Section 9, Act VI of 1881.

(*f*) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate. Section 4, Act VI of 1881.

(*2*) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another province, the petition shall further state the amount of such assets in each province and the District Judges within whose jurisdiction such assets are situate. Sections 2 (4) and 3 (3), Act VIII of 1903.

Addition to statement in petition, etc., probate or letters of administration of certain cases.

277. (*1*) Every person applying to any of the Courts mentioned in the proviso to section 271 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 274 and section 276, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid, Section 246 A, Act X of 1865. Section 65, Act V of 1881. Section 2 (5), Act VIII of 1903.

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

(*2*) The Court to which any such application is made under the proviso to section 271, may, if it thinks fit, reject the same.

(*3*) The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, namely:— Section 247, Act X of 1865, Section 66, Act V of 1881.

"I, (A. B.) the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate, by one witness to will.

278. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following, namely:— Section 248, Act X of 1865. Section 67, Act V of 1881.

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

279. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under section 193 of the Indian Penal Code.

Section 249, Act X of 1865. Section 68, Act V of 1881. XLV of 1860.

Powers of District Judge.

280. (1) In all cases it shall be lawful for the District Judge or District Delegate, if he thinks proper,—

Section 250, Act X of 1865. Section 69, Act V of 1881. Section 9, Act VI of 1881.

(a) to examine the petitioner in person, upon oath ;

(b) to require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be ;

(c) to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

Sections 2 (6) and 8 (4), Act VIII of 1903.

Caveats against grant of probate or administration.

281. (1) Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate.

Section 251, Act X of 1865. Section 70, Act V of 1881. Section 5, Act VI of 1881.

(2) Immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge.

(3) Immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

282. The caveat shall be to the following effect :—

Section 252, Act X of 1865. Section 71, Act V of 1891.

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of , at , without notice to *C. D.* of "

After entry of caveat, no proceeding taken on petition until after notice to caveator.

283. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or officer to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court may think reasonable.

Section 253, Act X of 1865. Section 72, Act V of 1881. Section Act VI 1881.

District Delegate when not to grant probate or administration.

284. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Section 253-A, Act X of 1865. Section 73, Act V of 1881. Section 7, Act VI of 1881.

Explanation.—"Contention" means the appearance of any one in person, or by his recognized agent, or by pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

285. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Section 258 B, Act X of 1865. Section 74, Act V of 1881. Section 7, Act VI of 1881.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

286. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in this Court, the petition, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do; and, in that case, the same shall be sent by him to the District Judge.

Section 253-C, Act X of 1865. Section 75, Act V of 1881. Section 7, Act VI of 1881.

Grant of probate to be under seal of Court.

287. When it appears to the District Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following, namely :—

Section 254, Act X of 1865. Section 76, Act V of 1881. Sections 8 and 9, Act VI of 1881.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*,)] hereby make known that on the day of in the year , the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may, from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint."

Sections 4 and 12, Act VI of 1889.

Grant of letters of administration to be under seal of Court.

288. When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following, namely :—

Section 255, Act X of 1865. Section 77, Act V of 1881. Section 8, Act VI of 1881. Section 9, Act VI of 1881. Sections 5 and 13, Act VI of 1889.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that on the day of , letters of administration (with or without the will annexed as the case may be) of the property and credits of , late of , deceased, were granted to , the father (*or* as the case may be) of the deceased, he having undertaken to administer the same and to

make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may, from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint."

Administration-bond

289. (*1*) Every person to whom any grant of letters of administration, other than a grant under section 239, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct:

Section 256, Act X of 1865. Section 78, Act V of 1881. Section 6, Act VI of 1889.

Provided that, when the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, the exception made by this section in respect of a grant under section 239 shall not operate.

Section 78, Act V of 1881.

(*2*) The District Judge may demand a like bond from any person to whom probate is granted.

Assignment of administration-bond

290. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his or their own name or names as if the same had been originally given to him or them instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof.

Section 257, Act X of 1865. Section 79, Act V of 1881.

Time for grant of probate and administration

291. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of 14 clear days from the day of the testator or intestate's death.

Section 258, Act X of 1865. Section 80, Act V of 1881.

Filing of original wills of which probate or administration with will annexed granted.

292. (*1*) Every District Judge, or District Delegate, shall file and preserve all original wills, of which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established.

Section 259, Act X of 1865. Section 81, Act V of 1881.

(*2*) The Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, etc., until same revoked.

293. After any grant of probate or letters of administration, no other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked.

Section 260, Act X of 1865. Section 82, Act V of 1881.

Procedure in contentious cases.

294. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Section 261, Act X of 1865. Section 83, Act V of 1881. V of 1908.

Surrender of revoked probate or letters of administration

295. (*1*) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Section 238, Act X of 1865. Section 157, Act V of 1881 Sections 10 and 17, Act VI of 1889.

(*2*) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

Payment to executor or administrator before probate or administration revoked

296. Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall notwithstanding such revocation be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letter of administration may afterwards be granted might have lawfully made.

Section 262, Act X of 1865 Section 84, Act V of 1882.

Power to refuse letters of administration

297. Notwithstanding anything hereinbefore contained, it shall, where the deceased was a Muhammadan, Buddhist or exempted person, or a Hindu, Sikh or Jaina to whom section 56 does not apply, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Section 85, Act V of 1881

Appeals from orders of District Judge.

298. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

Section 263, Act X of 1865 Section 86, Act V of 1881 V of 1908

Concurrent jurisdiction of High Court

299. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge:

Provided that, except in cases to which section 56 applies, no Court in any local area beyond the limits of the town of Calcutta, Madras and Bombay, and the province of Burma, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the Local Government has, by a notification in the local official Gazette, authorized it so to do.

Section 264, Act X of 1865 Section 87, Act V of 1881 Section 2, Act V of 1881. Section 2, Schedule I, Act XXVIII of 1920.

Removal of executor or administrator and provision for successor

300. The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.

Section 264-A, Act 1865 Section 87-A, Act V of 1881 Schedule I, Act XVIII of 1919.

Directions to executor or administrator.

301. Where probate or letters of administration in respect of any estate has or have been granted under this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

Section 264-B, Act X of 1865 Section 87-B, Act V of 1881. Schedule I, Act XVIII of 1919.

CHAPTER IV.

OF EXECUTORS OF THEIR OWN WRONG.

Application of Chapter

302. Nothing in this Chapter shall apply when the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Executor of his own wrong.

303. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong. Section 265 Act X of 1865.

Exceptions.—(1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations.

(*a*) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b*) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(*c*) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

304. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration. Section 266, Act X of 1865.

CHAPTER V.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and rents due at death.

305. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living. Section 267, Act X of 1865. Section 88, Act V of 1881.

Demands and rights of action of or against deceased survive to and against executor or administrator.

306. All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory. Section 268, Act X of 1865. Section 89, Act V of 1881. XLV of 1860.

Illustrations.

(*a*) A collision takes place on a railway in consequence of some neglect or default of an official and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b*) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

307. (*1*) Subject to the provisions of sub-section (*2*), an executor or administrator has power to dispose of the property of the deceased, vested in him under section 215, either wholly or in part, in such manner as he may think fit. Section 269, Act X of 1865. Section 90, Act V of 1881. Section 90, Act V of 1881, inserted by section 14 of Act VI of 1890.

Illustrations.

(*a*) The deceased has made a specific bequest of part of his property. The executor not having assented to the bequest, sells the subject of it. The sale is valid.

(*b*) The executor in the exercise of his discretion mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

(2) If the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, the general power conferred by sub-section (1) shall be subject to the following restrictions and conditions, namely :—

(i) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(ii) An administrator may not, without the previous permission of the Court by which the letters of administration were granted—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 215, or

(b) lease any such property for a term exceeding five years.

(iii) A disposal of property by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the property.

(iv) Before any probate or letters of administration is or are granted in such a case, there shall be endorsed thereon or annexed thereto, a copy of sub-section (1) and clauses (i) and (iii) of sub-section (2) or of sub-section (1) and clauses (ii) and (iii) of sub-section (2), as the case may be.

(v) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by clause (iv) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

General power of administration.

308. An executor or administrator may, in addition to, and not in derogation of, any other powers of expenditure lawfully exerciseable by him, incur expenditure— Section 269-A, Act X of 1865. Section 90-A, Act V of 1881. Schedule I, Act XVIII of 1919.

(a) on such acts as may be necessary for the proper care or management of any property belonging to any estate administered by him, and

(b) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Commission or agency charges.

309. An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator-General by or under the Administrator-General's Act, 1913. Section 269-B, Act X of 1865. Section 90-B, Act V of 1881. Schedule I, Act XVIII of 1919. III of 1913.

Purchase by executor or administrator of deceased's property.

310. If any executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold. Section 270, Act X of 1865. Section 91, Act V of 1881.

Powers of several executors or administrators exerciseable by one.

311. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration. Section 271, Act X of 1865. Section 92, Act V of 1881.

Illustrations

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, whether moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators

312. Upon the death of one or more of several executors or administrators, in the absence of any direction to the contrary in the will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor.

Section 272, Act X of 1865. Section 93, Act V of 1881.

Power of administrator of effects unadministered.

313. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Section 273, Act X of 1865. Section 94, Act V of 1881.

Power of administrator during minority

314. An administrator during minority has all the powers of an ordinary administrator.

Section 274, Act X of 1865. Section 95, Act V of 1881.

Powers of married executrix or administratix

315. When probate or letters of administration has or have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Section 275, Act X of 1865. Section 96, Act V of 1881.

CHAPTER VI.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral.

316. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Section 276, Act X of 1865. Section 97, Act V of 1881.

Inventory and account.

317. (*1*) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may, from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

Section 277, Act X of 1865. Section 98, Act V of 1881. Section 7, Act VI of 1889. Section 15, Act VI of 1889.

(*2*) The High Court may, from time to time, prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section intentionally, omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

XLV of 1860.

(*4*) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

Inventory to include property in any part of British India in certain cases.

318. In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his moveable and immoveable property situate in British India, and the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

Section 277-A, Act X of 1865. Section 99, Act V of 1881. Section 16, Act VI of 1889. Section 2 (7), Act VIII of 1903.

As to property of, and debts owing to, deceased.

319. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Section 278 Act X of 1865. Section 100, Act V of 1881.

Expenses to be paid before all debts.

320. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges including fees for medical attendance, and board and lodging for one month previous to his death, shall be paid before all debts.

Section 279, Act X of 1865. Section 101, Act V of 1881.

Expenses to be paid next after such expenses.

321. The expenses of obtaining probate or letters of administration including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death-bed charges.

Section 280, Act X of 1865. Section 102. Act V of 1881

Wages for certain services to be next paid, and then other debts.

322. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domistic servant shall next be paid, and then the other debts of the deceased.

Section 281, Act X of 1865. Section 103, Act V of 1881

Save as aforesaid, all debts to be paid equally and rateably.

323. Save as aforesaid, no creditor shall have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account; but the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably as far as the assets of the deceased will extend.

Section 282, Act X of 1865. Section 104, Act V of 1881

Application of moveable property to payment of debts where domicile not in British India.

324. (*1*) If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of British India.

Section 283, Act X of 1865. Section 9, Act VI of 1889.

(*2*) No creditor who has received payment of a part of his debt by virtue of sub-section (*1*) shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Section 284, Act X of 1865.

(*3*) This section shall not apply where the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal leaving moveable property to the value of 5,000 rupees, and immoveable property to the value 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

325. Debts of every description must be paid before any legacy.

Section 285, Act X of 1865. Section 105, Act V of 1881

Executor or administrator not bound to pay legacies without indemnity.

326. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Section 286, Act X of 1865. Section 106, Act V of 1881.

Abatement of general legacies

327. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Section 287, Act X of 1865. Section 107, Act V of 1881.

Non-abatement of specific legacy when assets sufficient to pay debts.

328. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Section 288, Act X of 1865. Section 108, Act V of 1881

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

329. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and, if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Section 289, Act X of 1865 Section 109, Act V of 1881

Rateable abatement of specific legacies.

330. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Section 290, Act X of 1865. Section 110, Act V of 1881

Illustration.

A has bequeathed to B a diamond ring valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator; and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

331. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Section 291 Act X of 1865 Section 111, Act V of 1881

CHAPTER VII.

OF ASSENT TO A LEGACY BY EXECUTOR OR ADMINISTRATOR.

Assent necessary to complete legatee's title.

332. The assent of the executor or administrator is necessary to complete a legatee's title to his legacy.

Section 292, Act X of 1865. Section 112, Act V of 1881. Section 148, Act V of 1881.

Illustrations.

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Imperial Bank of India The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C. is not entitled to receive the rents without the assent of the executor or administrator.

Effect of executor's assent to specific legacy.

333. (*1*) The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Section 293, Act X of 1865. Section 113, Act V of 1881.

(*2*) This assent may be verbal, and it may be either express or implied from the conduct of the executor or administrator.

Section 148, Act V of 1881.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

334. The assent of an executor or administrator to a legacy may be conditional, and if the condition is one which he has a right to enforce, and it is not performed, there is no assent.

Section 294, Act X of 1865. Section 114, Act V of 1881. Section 148, Act V of 1881.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

335. (*1*) When the executor or administrator is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may, in like manner, be expressed or implied.

(*2*) Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor or administrator.

Section 295, Act X of 1865. Section 115, Act V of 1881. Section 148, Act V of 1881.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

336. The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.

Section 296, Act X of 1865. Section 116, Act V of 1881. Section 148, Act V of 1881.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

337. An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Section 297, Act X of 1865. Section 117, Act V of 1881. Section 148, Act V of 1881.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER VIII.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commencement of annuity when no time fixed by will.

338. Where an annuity is given by a will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Section 298, Act X of 1865. Section 118, Act V of 1881.

When annuity, to be paid quarterly or monthly, first falls due

339. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month as the case may be, after the testator's death ; and shall, if the executor or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year.

Section 299, Act X of 1865. Section 119, Act V of 1881. Section 148, Act V of 1881.

Dates of successive payments when first payment directed to be made within given time or on day certain.

340. (*1*) Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made.

Section 300, Act X of 1865. Section 120, Act V of 1881.

(*2*) If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER IX.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

341. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may by any general rule authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Section 301, Act X of 1865. Section 121, Act V of 1881.

Investment of general legacy, to be paid at future

342. (*1*) Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 341.

Section 302, Act X of 1865. Sections 122 and 148, Act V of 1881

(*2*) The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to annuity.

343. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in securities of the kind mentioned in section 341.

Section 303, Act X of 1865. Section 123, Act V of 1881.

Transfer to residuary legatee of contingent bequest.

344. Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Section 304, Act X of 1865 Sections 124 and 148, Act V of 1881.

Investment of residue bequeathed for life, without direction to invest in particular securities.

345. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind mentioned in section 341 shall be converted into money and invested in such securities :

Section 305, Act X of 1865

Provided that this section shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Investment of residue bequeathed for life, with direction to invest in specified securities.

346. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Section 306, Act X of 1865. Section 125, Act V of 1881.

Time and manner of conversion and investment.

347. Such conversion and investment as are contemplated by sections 345 and 346 shall be made at such times and in such manner as the executor or administrator thinks fit; and, until such conversion and investment are completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as at the date of the testator's death) of such part of the fund as has not been so invested:

Provided that the rate of interest prior to completion of investment shall be six per cent. per annum when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person.

Section 307, Act X of 1865. *Cf.* Section 126, Act V of 1881. Section 148, Act V of 1881.

Procedure where minor entitled to immediate payment or possession of bequest and no direction to pay to person on his behalf.

348. (*1*) Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom or by whose District Delegate the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee is a ward of the Court of Wards.

(*2*) If the legatee is a ward of the Court of Wards, the legacy shall be paid to the Court of Wards to his account.

(*3*) Such payment into the Court of the District Judge, or to the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid.

(*4*) Money when paid in under this section shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

Section 308, Act X of 1865. Section 127, Act V of 1881. Section 8, Act VI of 1881.

CHAPTER X.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

349. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Section 309, Act X of 1865. Section 128, Act V of 1881.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the notes, but the interest which accrues in respect of them between the testator's death and A's completing 18, form part of the residue.

Residuary legatee's title to produce of residuary fund.

350. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Section 310, Act X of 1865. Section 129, Act V of 1881.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it, since the testator's death, goes as undisposed of.

Interest when no time fixed for payment of general legacy.

351. Where no time has been fixed for the payment of a general legacy, interest begins to run from expiration of one year from the testator's death.

Section 311, Act X of 1865. Section 130, Act V of 1881.

Exception.—(*1*) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(*2*) Where the testator was a parent or a more remote ancestor of the legatee, or has put himsef in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(*3*) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

352. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Section 312, Act X of 1865. Section 131, Act V of 1881.

Explanation.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest.

353. The rate of interest shall be four per cent. per annum in all cases except when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, in which case it shall be six per cent. per annum.

Section 313, Act X of 1865. *Cf.* Section 132, Act V of 1881. "Six."

No interest on arrears of annuity within first year after testator's death.

354. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Section 314, Act X of 1865. Section 133, Act V of 1881.

Interest on sum to be invested to produce annuity.

355. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Section 315, Act X of 1865 Section 134, Act V of 1881.

CHAPTER XI.

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Court's orders.

356. When an executor or administrator has paid a legacy under the order of a Court, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Section 316, Act X of 1865. Sections 135 and 148, Act V of 1881.

No refund if paid voluntarily.

357. When an executor or administrator has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Section 317, Act X of 1865. Sections 136 and 148, Act V of 1881.

Refund which legacy has become due on performance of condition within further time allowed under section 136.

358. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor or administrator has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under section 136 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those to whom he has paid it are liable to refund the amount.

Section 318, Act X of 1865. Sections 137 and 148, Act V of 1881.

When each legatee compellable to refund in proportion.

359. When the executor or administrator has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Section 319, Act X of 1865 Sections 138 and 148, Act V of 1881.

Distribution of assets.

360. Where an executor or administrator has given such notices as the High Court may, by any general rule, prescribe or, if no such rule has been made, as the High Court would give in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution :

Section 320 Act X of 1865 Section 139 Act V of 1881

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may call upon legatee to refund.

361. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies ; and whether the payment of the legacy by the executor or administrator was voluntary or not.

Section 321, Act X of 1865. Sections 140 and 148, Act V of 1881.

When legatee, not satisfied or compelled to refund under section 361, cannot oblige one paid in full to refund.

362. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under section 361, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

Section 322, Act X of 1865. Section 141, Act V of 1881.

When unsatisfied, legatee must first proceed against executor, if solvent.

363. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor or administrator if he is solvent ; but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Section 323, Act X of 1865 Sections 142 and 118, Act V of 1881.

Limit to refunding of one legatee to another.

364. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Section 324, Act X of 1865. Section 143, Act V of 1881

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees and, if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

365. The refunding shall in all cases be without interest.

Section 325, Act X of 1865. Section 144, Act V of 1881.

Residue after usual payments to be paid to residuary legatee.

366. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Section 326, Act X of 1865. Section 145, Act V of 1881.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

367. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there has been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 360, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

Section 326-A, Act X of 1865. Section 145-A, Act V of 1881. Sections 9 and 16, Act II of 1890.

CHAPTER XII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation.

368. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned. Section 327, Act X of 1865, Section 146, Act V of 1881.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b*) The deceased has a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

Liability of executor or administrator for neglect to get in any part of property.

369. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount. Section 328, Act X of 1865, Section 147, Act V of 1881.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART VIII.

SUCCESSION CERTIFICATES.

Restriction on grant of certificates under this Part.

370. (*1*) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 210 or section 211 to be established by letters of administration or probate : Section 1 (4), Act VII of 1889.

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act. Section 6, Act VII of 1901.

(*2*) For the purposes of this Part, "security" means— Section 3 (2), Act VII of 1889.

(*a*) any promissory note, debenture stock or other security of the Government of India or of a Local Government;

(*b*) any bond, debenture or annuity charged by Act of Parliament on the revenues of India ;

(*c*) any stock or debenture of, or share in, a company or other incorporated institution ;

(*d*) any debenture or other security for money issued by, or on behalf of, a local authority ;

(*e*) any other security which the Governor-General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Part.

Court having jurisdiction to grant certificate.

371. The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part. Section 5, Act VII of 1889.

Application for certificate.

372. (*1*) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :— Section 6 Act VII of 1889. V of 1908

(*a*) the time of the death of the deceased ;

(*b*) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to which the application is made, then the property of the deceased within those limits ;

(*c*) the family or other near relatives of the deceased and their respective residences ;

(*d*) the right in which the petitioner claims ;

(*e*) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted ; and

(*f*) the debts and securities in respect of which the certificate is applied for.

(*2*) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 193 of the Indian Penal Code. XLV of 1860.

Procedure on application

373. (*1*) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing— Section 7, Act VII of 1889

(*a*) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(*b*) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(*2*) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(*3*) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to him to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *primâ facie* the best title thereto.

(*4*) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

Contents of certificates.

374. When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted— Section 8, Act VII of 1889

(*a*) to receive interest or dividends on, or

(*b*) to negotiate or transfer, or

(*c*) both to receive interest or dividends on, and to negotiate or transfer,

the securities or any of them.

Requisition of security from grantee of certificate.

375. (*1*) The District Judge shall in any case in which he proposes to proceed under sub-section (*3*) or sub-section (*4*) of section 373, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities. Section 9, Act VII of 1889.

(2) The Judge may, on application made by petition and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as the Judge thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

Extension of certificate.

376. (1) A District Judge may, from time to time, on the application of the holder of a certificate under this Part, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein. Section 10, Act VII of 1889.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 375 may be required, in the same manner as upon the original grant of a certificate.

Forms of certificate and extended certificate.

377. Certificates shall be granted and extensions of certificate shall be made, as nearly as circumstances admit, in the forms set forth in Schedule IV. Section 11, Act VII of 1889.

Amendment of certificate in respect of powers as to securities.

378. Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Judge may, on application made by petition and on cause shown to his satisfaction, amend the certificate by conferring any of the powers mentioned in section 374 or by substituting any one or any other of those powers. Section 12, Act VII of 1889.

Mode of collecting Court-fees on certificates.

379. (1) Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court-fees Act, 1870, in respect of the certificate or extension applied for. Section 14, Act VII of 1889. VII of 1870.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

Local extent of certificate.

380. A certificate under this Part shall have effect throughout the whole of British India. Section 15, Act VII of 1889.

Effect of certificate.

381. Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted. Section 16, Act VII of 1889.

Effect of certificate granted or extended by British representative in Foreign State

382. Where a certificate in the form, as nearly as circumstances admit, of Schedule IV has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Part, have the same effect in British India as a certificate granted or extended under this Part. Section 17, Act VII of 1889. VII of 1870.

Revocation of certificate.

383. A certificate granted under this Part may be revoked for any of the following causes, namely :— Section 18, Act VII of 1889.

(*a*) that the proceedings to obtain the certificate were defective in substance ;

(*b*) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case ;

(*c*) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;

(*d*) that the certificate has become useless and inoperative through circumstances ;

(*e*) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal.

384. (*1*) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly in supersession of the certificate, if any, already granted. Section 19, Act VII of 1889

(*2*) An appeal under sub-section (*1*) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908. V of 1908.

(*3*) Subject to the provisions of sub-section (*1*) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, as applied by section 141 of that Code, an order of a District Judge under this Part shall be final. V of 1908

Effect on certificate of previous certificate, probate or letters of administration.

385. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force. Section 20 Act VII of 1889

Validation of certain payments made in good faith to holder of invalid certificate.

386. Where a certificate under this Part has been superseded or is invalid by reason of the certificate having been revoked under section 383, or by reason of the grant of a certificate to a person named in an appellate order under section 384, or by reason of a certificate having been previously granted, or for any other cause, all payments made, or dealings had as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate. Section 22, Act VII of 1889

Effect of decisions under this Act, and liability of holders of certificate thereunder.

387. No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, to account therefor to the person lawfully entitled thereto. Section 25, Act VII of 1889

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

388. (*1*) The Local Government may, by notification in the local official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part. Section 26, Act VII of 1889

(*2*) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (*1*) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the

appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(*3*) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, as applied by section 141 of that Code, be final. V of 1908.

(*4*) The District Judge may withdraw any proceedings under this Part from an inferior Court and may either himself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(*5*) A notification under sub-section (*1*) may specify any inferior Court specially or any class of such Courts in any local area.

(*6*) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall for the purposes of this section be deemed to be a Court inferior in grade to a District Judge.

Surrender of superseded and invalid certificates.

389. (*1*) When a certificate under this Part has been superseded or is invalid from any of the causes mentioned in section 386, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court. Section 27, Act VII of 1889.

(*2*) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

Provisions with respect to certificates under Bombay Regulation VIII of 1827

390. Notwithstanding anything in the Regulation of the Bombay Code No. VIII of 1827, the provisions of section 370, sub-section (*2*), section 372, sub-section (*1*), clause (*f*), and sections 374, 375, 376, 377, 378, 379, 381, 383, 384, 387, 388 and 389 with respect to certificates under this Part and applications therefor, and of section 317 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the 1st day of May, 1889, and to the exhibition of inventories and accounts by the holders of such certificates so granted. Section 28, Act VII of 1889.

PART IX.

MISCELLANEOUS.

Saving

391. Nothing in Part VI, Part VII or Part VIII shall— Section 149, Act V of 1881.

(*i*) validate any testamentary disposition which would otherwise have been invalid;

(*ii*) invalidate any such disposition which would otherwise have been valid;

(*iii*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*iv*) affect the Administrator General's Act, 1913. III of 1913.

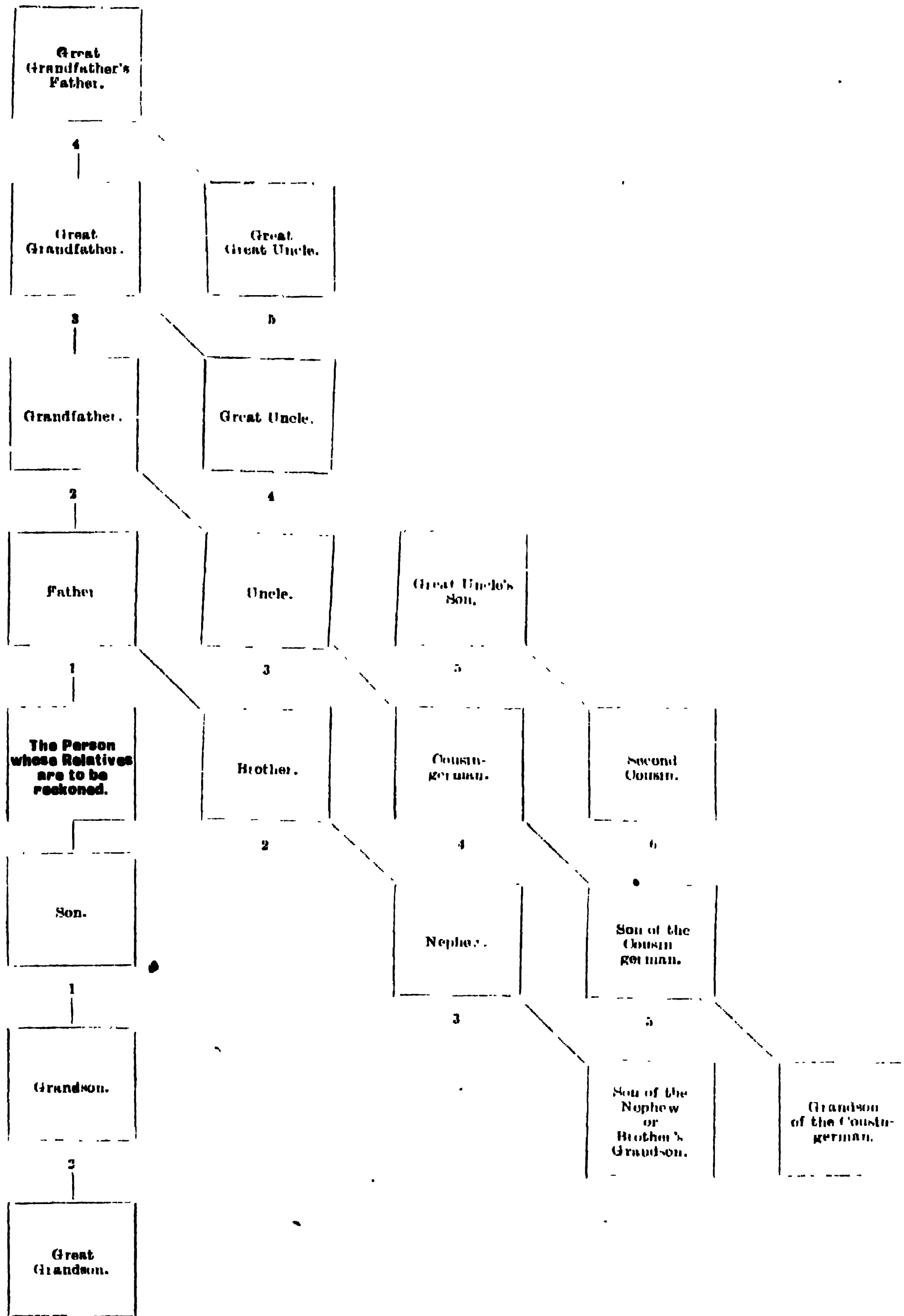
Repeals.

392. The enactments mentioned in Schedule V are hereby repealed to the extent specified in the third column thereof.

SCHEDULE I.

(*See section 28.*)

TABLE OF CONSANGUINITY.



SCHEDULE II.

PART I.

(*See section 51.*)

(1) Brothers and sisters, and the children of lineal descendants of such of them as shall have predeceased the intestate.

(2) Grandfather and grandmother.

(3) Grandfather's sons and daughters, and the lineal descendants of such of them as have predeceased the intestate.

(4) Great-grandfather and great-grandmother.

(5) Great grandfather's sons and daughters, and the lineal descendants of such of them as have predeceased the intestate.

PART II.

(*See section 52.*)

(1) Father and mother.

(2) Brothers and sisters, and the lineal descendants of such of them as have predeceased the intestate.

(3) Paternal grandfather and paternal grandmother.

(4) Children of the paternal grandfather, and the lineal descendants of such of them as have predeceased the intestate.

(5) Paternal grandfather's father and mother.

(6) Paternal grandfather's father's children, and the lineal descendants of such of them as have predeceased the intestate.

(7) Brothers and sisters by the mother's side, and the lineal descendants of such of them as have predeceased the intestate.

(8) Maternal grandfather and maternal grandmother.

(9) Children of the maternal grandfather, and the lineal descendants of such of them as have predeceased the intestate.

(10) Son's widow, if she has not re married at or before the death of the intestate.

(11) Brother's widow, if she has not re-married at or before the death of the intestate.

(12) Paternal grandfather's son's widow, if she has not re-married at or before the death of the intestate.

(13) Maternal grandfather's son's widow, if she has not re married at or before the death of the intestate.

(14) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.

(15) Maternal grandfather's father and mother.

(16) Children of the maternal grandfather's father, and the lineal descendants of such of them as have predeceased the intestate.

(17) Paternal grandmother's father and mother.

(18) Children of the paternal grandmother's father, and the lineal descendants of such of them as have predeceased the intestate.

SCHEDULE III.

(*See section 56.*)

PROVISIONS OF PART IV APPLICABLE TO CERTAIN WILLS AND CODICILS DESCRIBED IN SECTION 56.

Sections 58, 60, 61, 62, 63, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 94, 95, 97, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143. 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188 and 189.

Restrictions and modifications in application of foregoing sections.

1. Nothing therein contained shall authorise a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for the application of these sections, he could not deprive them by will. Secti of 187 Sect of 1881

2. Nothing therein contained shall authorise any Hindu, Buddhist, Sikh or Jaina to create in property any interest which he could not have created before the first day of September, 1870.

3. Nothing therein contained shall affect any law of adoption or intestate succession.

Section 6, Act XXI of 1870.

4. In applying any of the following sections, namely, sections seventy-four, seventy five, one hundred and four, one hundred and eight, one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen and one hundred and fifteen, to such wills and codicils the words "son," "sons," "child" and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.

SCHEDULE IV.

(*See section 377.*)

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

In the Court of

To *A. B.*

Schedule II, Act VII of 1889.

Whereas you applied on the day of for a certificate under Part VIII of the Indian Succession Act, 19 , in respect of the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of

District Judge.

In the Court of

On the application of *A. B.* made to me on the day of , I hereby extend this certificate to the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This extension empowers *A. B.* to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of .

District Judge.

SCHEDULE V.

(*See section 392.*)

ENACTMENTS REPEALED.

Number and year.	Short title.	Extent of repeal.
XIX of 1841 ...	The Succession (Property Protection) Act, 1841.	So much as has not already been repealed.
X of 1865 ...	The Indian Succession Act, 1865 ...	Ditto ditto.
XXI of 1865 ...	The Parsi Intestate Succession Act, 1865	The whole Act.
XXI of 1870 ...	The Hindu Wills Act, 1870 ...	So much as has not already been repealed.
III of 1874 ...	The Married Woman's Property Act, 1874.	The last paragraph of section 2.
V of 1881 ...	The Probate and Administration Act, 1881.	So much as has not already been repealed.
VI of 1881 ...	The District Delegates Act, 1881 ...	The whole Act.
VI of 1889 ...	The Probate and Administration Act, 1889.	So much as has not already been repealed.
VII of 1889 ...	The Succession Certificate Act, 1889 ...	So much as is unrepealed, except section 13.
II of 1890 ...	The Probate and Administration Act, 1890.	So much as has not already been repealed.
VII of 1901 ..	The Native Christian Administration of Estates Act, 1901.	Ditto ditto.
VIII of 1903 ...	The Probate and Administration Act, 1903.	Ditto ditto.
XVIII of 1919 ...	The Repealing and Amending Act, 1919	So much of Schedule I as refers to Act X of 1865 or to Act V of 1881.

TABLES SHOWING DISTRIBUTION IN THE BILL OF SECTIONS OF ACTS REPEALED BY THE BILL.

THE SUCCESSION (PROPERTY PROTECTION) ACT (XIX OF 1841).

Section of Act.	Clause of Bill.	Remarks	Section of Act.	Clause of Bill.	Remarks.
1	191 (1)		11	201	
2	191 (2)		12	202	
3	192		13	203	
4	193		14	204	
5	194		15	205	
6	195		16	206	
7	197		17	207	
8	198		18	108	
9	199		19	209	
10	200		20	...	(Repealed by Act VIII of 1855.)

THE INDIAN SUCCESSION ACT (X OF 1865).

PART I.—PRELIMINARY.

Section of Act.	Clause of Bill.	Remarks
1	1	
2	21, 57 (2), 214	
3	2	
4	4	

PART II.—OF DOMICILE.

Section of Act.	Clause of Bill.	Remarks
5	6	
6	7	
7	8	
8	9	
9	10	
10	11	
11	12	
12	13	
13	14	
14	15	
15	16	
16	17	
17	18	
18	19	
19	20	

PART III.—OF CONSANGUINITY.

Section of Act.	Clause of Bill.	Remarks
20	24	
21	25	
22	26	
23	27	
24	28	

PART IV.—OF INTESTACY.

Section of Act.	Clause of Bill.	Remarks
25	22	
26	29	
27	30	
28	31	

PART V.—OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(a) Where he has left lineal Descendants.

Section of Act.	Clause of Bill.	Remarks
29	32	
30	33	
31	34	
32	35	
33	36	

(b) Where the Intestate has left no lineal Descendants.

Section of Act.	Clause of Bill.	Remarks
34	37	
35	38	
36	39	
37	40	
38	41	
39	42	
40	43	
41	44	
42	45	

PART VI.—OF THE EFFECT OF MARRIAGE AND MARRIAGE SETTLEMENTS ON PROPERTY.

Section of Act.	Clause of Bill.	Remarks
43	53	
44	54	
45	55	

PART VII.—OF WILLS AND CODICILS.

Section of Act.	Clause of Bill.	Remarks
46	58	
47	59	
48	60	
49	61	

THE INDIAN SUCCESSION ACT (X OF 1865)—*continued.*

Section of Act	Clause of Bill	Remarks
PART VIII.—OF THE EXECUTION OF UNPRIVILEGED WILLS		
50	62	
51	63	
PART IX.—OF PRIVILEGED WILLS.		
52	64	
53	65	
PART X.—OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS		
54	66	
55	67	
56	68	
57	69	
58	70	
59	71	
60	72	
PART XI.—OF THE CONSTRUCTION OF WILLS.		
61	73	
62	74	
63	75	
64	76	
65	77	
66	78	
67	79	
68	80	
69	81	
70	82	
71	83	
72	84	
73	85	
74	86	
75	87	
76	88	
77	89	
78	90	
79	91	
80	92	
81	93	
82	94	
83	95	
84	96	
85	97	
86	98	
87	99	
88	100	
89	101	
90	102	
91	103	
92	104	
93	105	
94	106	
95	107	
96	108	
97	109	
98	110	
PART XII.—OF VOID BEQUESTS.		
99	111	
100	112	
101	113	
102	114	
103	115	
104	116	
105	117	

Section of Act	Clause of Bill	Remarks.
PART XIII.—OF THE VESTING OF LEGACIES		
106	118	
107	119	
108	120	
PART XIV.—OF ONEROUS BEQUESTS		
109	121	
110	122	
PART XV.—OF CONTINGENT BEQUESTS		
111	123	
112	124	
PART XVI.—OF CONDITIONAL BEQUESTS		
113	125	
114	126	
115	127	
116	128	
117	129	
118	130	
119	131	
120	132	
121	133	
122	134	
123	135	
124	136	
PART XVII.—OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.		
125	137	
126	138	
127	139	
PART XVIII.—OF BEQUEST TO AN EXECUTOR.		
128	140	
PART XIX. OF SPECIFIC LEGACIES		
129	141	
130	142	
131	143	
132	144	
133	145	
134	146	
135	147	
136	148	
PART XX.—OF DEMONSTRATIVE LEGACIES.		
137	149	
138	150	
PART XXI.—OF ADEMPTION OF LEGACIES.		
139	151	
140	152	
141	153	
142	154	
143	155	
144	156	
145	157	
146	158	
147	159	
148	160	
149	161	
150	162	
151	163	
152	164	
153	165	

THE INDIAN SUCCESSION ACT (X OF 1865)—*continued.*

Section of Act.	Clause of Bill.	Remarks.
PART XXII.—OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.		
154	166	
155	167	
156	168	
157	169	
PART XXIII.—OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.		
158	170	
PART XXIV.—OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.		
159	171	
PART XXV.—OF BEQUESTS OF ANNUITIES.		
160	172	
161	173	
162	174	
163	175	
PART XXVI.—OF LEGACIES TO CREDITORS AND PORTIONERS.		
164	176	
165	177	
166	178	
PART XXVII.—OF ELECTION.		
167	179	
168	180	
169	181	
170	182	
171	183	
172	184, 185	
173	186	
174, 175	187	
176	188	
177	189	
PART XXVIII.—OF GIFTS IN CONTEMPLATION OF DEATH.		
178	190	
PART XXIX.—OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.		
179	215	
180	216	
181	217 (*1*)	
182	217 (*2*)	
183	218	
184	219	
185	220	
186	221	
187	211	
188	222	
189	223	
190	210	
191	224	
PART XXIX.—OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION—*concld.*		
192	225	
193	226	
194	227	
195	228	
196	229	
197	230	
198	231	
199	232	
200, 201, 202, 203, 204, 205, 206, 207	234	
PART XXX.—OF LIMITED GRANTS.		
Grants limited in duration		
208	235	
209	236	
210	237	
211	238	
Grants for the use and benefit of others having right.		
212	239	
213	240	
214	241	
215	242	
216	243	
217	244	
218	245	
For special purposes.		
219	246	
220	247	
221	248	
222	249	
223	250	
224	251	
225	252	
Grants with exception.		
226	253	
227	254	
Grants of the rest.		
228	255	
Grants of effects unadministered.		
229	256	
230	257	
231	258	
Alteration in grants.		
232	259	
233	260	
Revocation of grants.		
234	261	

THE INDIAN SUCCESSION ACT (X OF 1865)—*continued.*

PART XXXI.—OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Section of Act.	Clause of Bill.	Remarks.
235	262	
235A	263	
236	264	
237	265	
238	266	
239	267	
240	268	
241	269	
241A	270	
242	271	
242A	272	
243	273	
244	274	
245	275	
246	276	
246A } 247 }	277	
248	278	
249	279	
250	280	
251	281	
252	282	
253	283	
253A	284	
253B	285	
253C	286	
254	287	
255	288	
256	289	
257	290	
258	291	
259	292	
260	293	
261	294	
262	296	
263	298	
264	299	
264A	300	
264B	301	

PART XXXII.—OF EXECUTORS OF THEIR OWN WRONG.

Section of Act.	Clause of Bill.	Remarks.
265	303	
266	304	

PART XXXIII.—OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

Section of Act.	Clause of Bill.	Remarks.
267	305	
268	306	
269	307	
269A	308	
269B	309	
270	310	
271	311	
272	312	
273	313	
274	314	
275	315	

PART XXXIV.—OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

Section of Act.	Clause of Bill.	Remarks.
276	316	
277	317	
277A	318	
278	319	
279	320	
280	321	
281	322	
282	323	

PART XXXIV.—OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR—*concld.*

Section of Act.	Clause of Bill.	Remarks.
283 } 284 }	324	
285	325	
286	326	
287	327	
288	328	
289	329	
290	330	
291	331	

PART XXXV.—OF THE EXECUTOR'S ASSENT TO A LEGACY.

Section of Act.	Clause of Bill.	Remarks.
292	332	
293	333	
294	334	
295	335	
296	336	
297	337	

PART XXXVI.—OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Section of Act.	Clause of Bill.	Remarks.
298	338	
299	339	
300	340	

PART XXXVII.—OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Section of Act.	Clause of Bill.	Remarks.
301	341	
302	342	
303	343	
304	344	
305	345	
306	346	
307	347	
308	348	

PART XXXVIII.—OF THE PRODUCE AND INTEREST OF LEGACIES.

Section of Act.	Clause of Bill.	Remarks.
309	349	
310	350	
311	351	
312	352	
313	353	
314	354	
315	355	

PART XXXIX.—OF THE REFUNDING OF LEGACIES.

Section of Act.	Clause of Bill.	Remarks.
316	356	
317	357	
318	358	
319	359	
320	360	
321	361	
322	362	
323	363	
324	364	
325	365	
326	366	
326A	367	

PART XL.—OF THE LIABILITY OF AN EXECUTOR OR ARMINISTRATOR FOR DEVASTATION.

Section of Act.	Clause of Bill.	Remarks.
327	368	
328	369	

Section of Act.	Clause of Bill.	Remarks	Section of Act.	Clause of Bill	Remarks.

THE INDIAN SUCCESSION ACT (X OF 1865)—*concluded.*

PART XLI.—MISCELLANEOUS.

329	...	(Repealed by Act V of 1870.)	331	4, 5, 21, 57, 210, 211.	
			332	3	
			333	295	
330	...	(Repealed by Act XXIV of 1867.)	Schedule (Repealed).		

THE PARSI INTESTATE SUCCESSION ACT (XXI OF 1865).

1	46		7	52	
2	47		8	21, 23 and 53	
3	48		First Schedule.	Schedule II, Part I.	
4	49				
5	50		Second Schedule.	Schedule II, Part II.	
6	51				

THE HINDU WILLS ACT (XXI OF 1870).

1	Short title.		4	Spent	
2	56 and Schedule III.		5	...	
3	56 and Schedule III.		6	Schedule III.	

THE PROBATE AND ADMINISTRATION ACT (V OF 1881)

PREAMBLE.

CHAPTER I.—PRELIMINARY.

1	Short title.	
2	214, 262, 299	
3	2	

CHAPTER II.—OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4	215	
5	216	
6	217 (1)	
7	217 (2)	
8	218	
9	219	
10	220	
11	221	
12	222	
13	223	
14	224	
15	225	
16	226	
17	227	
18	228	
19	229	
20	230	
21	231	
22	232	
23	233	

CHAPTER III.—OF LIMITED GRANTS.

(a) Grants limited in duration.

24	235	
25	236	
26	237	
27	238	

CHAPTER III.—OF LIMITED GRANTS—*concld.*

(b) Grants for the use and benefit of others having right.

28	239	
29	240	
30	241	
31	242	
32	243	
33	244	
34	245	

(c) For special purposes.

35	246	
36	247	
37	248	
38	249	
39	250	
40	251	
41	252	

(d) Grants with exception.

42	253	
43	254	

(e) Grants of the rest.

44	255	

(f) Grants of effects unadministered

45	256	
46	257	
47	258	

THE PROBATE AND ADMINISTRATION ACT (V OF 1881)—*continued.*

PREAMBLE—*contd*

Section of Act	Clause of Bill	Remarks
CHAPTER IV.—ALTERATION AND REVOCATION OF GRANTS		
48	259	
49	260	
50	261	
CHAPTER V.—OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION		
51	262	
52	263	
53	264	
54	265	
55	266	
56	268	
57	269	
58	270	
59	271	
60	272	
61	273	
62	274	
63	275	
64	276	
65, 66	277	
67	278	
68	279	
69	280	
70	281	
71	282	
72	283	
73	284	
74	285	
75	286	
76	287	
77	288	
78	289	
79	290	
80	291	
81	292	
82	293	
83	294	
84	296	
85	297	
86	298	
87	299	
87A	300	
87B	301	
CHAPTER VI.—OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.		
88	305	
89	306	
90	307	
90A	308	
90B	309	
91	310	
92	311	
93	312	
94	313	
95	314	
96	315	
CHAPTER VII.—OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR		
[illegible]	316	
[illegible]	317	
99	318	
100	319	
101	320	
102	321	
103	322	
CHAPTER VII.—OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR—*concld.*		
104	323	
105	325	
106	326	
107	327	
108	328	
109	329	
110	330	
111	331	
CHAPTER VIII.—OF THE EXECUTOR'S ASSENT TO A LEGACY.		
112	332	
113	333	
114	334	
115	335	
116	336	
117	337	
CHAPTER IX.—OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.		
118	338	
119	339	
120	340	
CHAPTER X.—OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.		
121	341	
122	342	
123	343	
124	344	
125	346	
126	347	
127	348	
CHAPTER XI.—OF THE PRODUCE AND INTEREST OF LEGACIES		
128	349	
129	350	
130	351	
131	352	
132	353	
133	354	
134	355	
CHAPTER XII.—OF THE REFUNDING OF LEGACIES.		
135	356	
136	357	
137	136, 358	
138	359	
139	360	
140	361	
141	362	
142	363	
143	364	
144	365	
145	366	
145A	367	
CHAPTER XIII.—OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.		
146	368	
147	369	